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IN THE

Supreme Court of the United States

OCTOBER TERM, 1944

THE STATE OF NEBRASKA, COMPLAINANT,

vs.

THE STATE OF WYOMING, DEFENDANT,

and

THE STATE OF COLORADO, IMPLEADED DEFENDANT,
THE UNITED STATES OF AMERICA, INTERVENOR.

PORTIONS OF THE RECORD CONTAINED IN APPENDICES SUBMITTED WITH BRIEFS OF PARTIES

VOL. II
PAGES 271-796

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N2 Nebraska's second brief
W1 Wyoming's first brief
W2 Wyoming's second brief
CA Colorado's appendix
U.S.1 United States' appendix, first brief
U.S.2 United States' appendix, second brief

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No. 6, Original

In the

Supreme Court of the United States

October Term, 1944

The State of Nebraska, complainant

vs.

The State of Wyoming, defendant,

and

The State of Colorado, impleaded defendant,
The United States of America, intervenor.

APPENDICES V AND VI TO BRIEF OF THE UNITED STATES OF AMERICA, INTERVENOR.

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APPENDIX V

TRANSCRIPT OF TESTIMONY

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Attorneys and Witnesses for the Parties Appearing in Those Portions of the Transcript Reproduced:

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Nebraska:

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JOHN L. RIDDELL

Wyoming:

WILLIAM J. WEHRLI
JAMES A. GREENWOOD

Colorado:

JEAN BREITENSTEIN
THOMAS J. WARREN
SHRADER P. HOWELL

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FREDERIC L. KIRGIS
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CHARLES E. COLLETT

Witnesses

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T. W. PARRY
MABEL J. THOMPSON

Wyoming:

HARRY W. BASHORE
JACK HARMAN
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Colorado:

C. C. PATTERSON

United States:

JOHN A. KEIMIG
ANDREW WEISS
GOODRICH W. LINEWEAVER
IRVING J. MATTHEWS
CARROLL EDWARD DOBBIN
BARRY DIBBLE

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14944 Mr. Good: Immediately following the documents or sheets which constitute the amended Application 768 and the portion covering the Interstate Canal, is this order: Office of the State Board of Irrigation, Lincoln, Nebraska. February 14, 1905. There is a reference to the particular record, Volume 1, page 102, where it is recorded in permanent book form. "The State Board of Irrigation met at 10 o'clock A.M. at the call of the president and in accordance with notice mailed January 25, 1905.

Present: Honorable J. H. Mickey, Governor, North Platte; Norris Brown, Attorney General; Hon. H. M. Eaton, Commissioner of Public Lands and Buildings.

14945 Application No. 768, filed by Secretary of the Interior, and Application No. 769, filed by Heyward G. Leavitt was taken up for consideration. Mr. John E. Field, Engineer U.S.G.S. and M. B. Carpenter, Attorney, appeared for the Secretary of the Interior, Heyward G. Leavitt, applicant, appeared in his own behalf and was represented by Attorneys J. E. Kelby and E. R. Duffie.

The Board listened to the statement of J. E. Field and E. R. Duffie, and at 12 o'clock took a recess until 1:30 p.m.

1:30 P. M. the Board reconvened, all members being present. Mr. Leavitt made a statement in behalf of his application, after which the Board listened to the arguments of his attorneys and took the matter under advisement.

At 5:00 o'clock p.m. the Board reconvened, all members being present. Applications No. 768 and 769 were taken up and the following findings were made.

First, Application No. 768, filed by the Secretary of the Interior, as corrected, is approved, the date of priority being September 19, 1904, the date when the first filing was made in the office of the State Board of Irrigation. The lands to be irrigated under this appropriation being all lands described in said application which lie within the

State of Nebraska and are not covered by prior existing rights.

* * * * *

14958 By Mr. Good:

Q. Mr. Klingman, handing you Nebraska Exhibit 567, that is the notice of special election which contains the text of a contract between the United States and the Gering-Ft. Laramie District?

A. Yes, sir.

Q. Was that contract adopted by the district?

A. Yes, sir.

Q. And signed by the United States and the Gering-Ft. Laramie District?

A. Yes, sir.

Q. And it is now in force in the language covered by Exhibit 567, is it?

A. Yes, sir.

Mr. Good: Plaintiff offers in evidence Nebraska's Exhibit 567, contract between the Gering-Ft. Laramie Irrigation District and the United States. The particular purpose, I may state, is to show the relations between the district and the United States both financially and as to its right to water.

(Nebraska's Exhibit 567 is made a part of this record, being found in numerical order in supplemental volumes of exhibits.)

14959 The Master: When did this become effective, this contract?

Mr. Good: Can you state Mr. Klingman?

Mr. Klingman: November 2, 1926.

Q. It became effective in 1926?

A. Yes, sir.

Q. That was shortly after the organization of the Gering-Ft. Laramie District?

A. No, sir; it was a long time afterwards; the district was organized in December, 1918.

Transcript pages 14945, 14958, 14959 *Kingman—direct*

Q. Oh, the district was organized in December, 1918?

A. Yes.

Q. But this year, 1926, was the year in which the Gering-Ft. Laramie District took over the operation?

A. That is correct.

Q. And this is the contract, by the terms of which the operation was taken over?

A. Yes, sir.

* * * * *

14980 Q. Mr. Parry, calling your attention to Exhibit 570, which is on the corner of your table over here (indicating); that purports to be a contract between the United States and the Pathfinder Irrigation District of date July 31, 1926, does it?

A. Yes sir; it is.

Q. And is that a copy of the original contract which is in your custody and is part of the records of the Pathfinder Irrigation District?

A. It is.

14981 Q. And was that signed by the United States and by the Pathfinder Irrigation District as shown on page 39?

A. It was.

Q. Is that correct?

A. That is correct.

Q. Calling your attention to the language at the bottom of page 39 and the top of page 40, I note that the North Platte Valley Water Users Association through its President and Secretary attached a signature to this on August 18, 1926; what was the North Platte Valley Water Users Association?

A. The North Platte Valley Water Users Association was an organization of the Water Users formed, as I remember, as I get it, about the time the project was constructed, and the organization represented the water users up to the time the Pathfinder Irrigation District was organized in 1926.

Q. After the organization of the Pathfinder Irrigation

District and the effective time of this contract, Exhibit 570, what happened to the water users association?

A. Well, they, I guess, just disbanded; I don't know of anything that has ever been done about it; they are not active anyway.

Q. It ceased to have any active duties as an organization after the Pathfinder Irrigation District or the Interstate Canal?

A. Yes, sir.

Mr. Good: We offer in evidence Exhibit 570

14982 (Nebraska Exhibit 570, repayment contract between the United States of America and the Pathfinder Irrigation District, State of Nebraska, is made a part of this record, being found in numerical order in supplemental volumes of exhibits.)

Q. Handing you Exhibit 571, is that the photostatic copy of the decree as referred to in the Exhibit 569?

A. Yes, sir, the pages; Exhibit 569, the page where it says "Refer to tabulation water right proof" refers to the pages in this Exhibit 571.

Mr. Good: Can it be stipulated that a decree in substantially the same form by Wyoming, in connection with the Gering-Ft. Laramie, was issued, so that we don't need to introduce the corresponding copies?

Mr. Greenwood: Oh, yes.

Mr. Good: Is that stipulation all right with Colorado and the United States?

Mr. Warren: Yes.

Mr. Burke: Yes.

The Master: Do I need this entire book, the engrossing of the decree? Why not introduce the first two pages?

Mr. Good: Yes, and the last page as well.

The Master: Yes, that is all right, say the first two and the last pages.

Mr. Good: That is agreeable, the first two and the last pages, together with—(interrupted).

14983 Mr. Greenwood: I will tell you what I had in mind: it might be helpful in the record to have a sample copy of the form of the certificate.

Mr. Good: That went in with the Mitchell.

Mr. Greenwood: Well, do they have the Reclamation Act? That would be the only distinction. If it has not, put it in.

Mr. Good: I don't know—do you have those forms here?

The Witness: We have them; if we haven't we can get them in five minutes; they are in the corridor.

Q. Handing you Exhibit 572, is that a photostatic copy of a certificate of appropriation under the Pathfinder Irrigation District as issued by the Board of Control of the State of Wyoming?

A. Yes, sir; it is.

Q. And are those here, other certificates that have been issued in substantially the same form?

A. They are here.

Mr. Good: We offer in evidence Exhibit 572.

(Nebraska's Exhibits 571 and 572 are made a part of this record, being found in numerical order in supplemental volumes of exhibits.)

The Master: I assume that the land descriptions in the decree are identical with the descriptions in Exhibit 569; are they?

Mr. Good: Yes; that is correct.

* * * * *

15007 Q. Now, Mrs. Thompson, handing you Exhibits 574 and 575, will you state what these two exhibits are?

A. Exhibit 574 is a copy of the contract between the United States and the Northport Irrigation District pro-

viding for the transfer of the management of the irrigation works of the Northport Division to the district, and for repayment of the construction costs upon a crop production basis.

Q. And this exhibit is a copy of the contract which appears in your record, is it?

A. It is.

Q. And shows the signatures which are in typewriting on page 25 of the exhibit?

A. Yes, sir.

15008 Q. Then Exhibit 575—what is that?

A. Exhibit 575 is an amendment to the contract, to the contract of November, 1926, an amendment to the contract dated November 24, 1926.

Q. And is this a copy of the original which appears in your office?

A. It is.

Q. And I notice your name appears on the last sheet, secretary: is that correct?

A. Yes, sir.

Q. And you did sign it as Secretary?

A. I did.

Q. And you know the signature of Mr. Gebauer on behalf of the District?

A. I do.

Q. And the contract also, as it appears in your files, appears to have been signed by Mr. Walters, the First Assistant Secretary of the Interior; is that correct?

A. Yes, sir.

Mr. Good: We offer in evidence Exhibits 574 and 575.

(Nebraska Exhibits 574 and 575 are made a part of this record, being found in numerical order in supplemental volumes of exhibits.)

15009 Q. Now, Mrs. Thompson, handing you Exhibit 576, is this a photostat of a document which you have procured from the State of Wyoming?

A. It is.

Q. And handing you Exhibit 577, is that likewise a

photostat of an exhibit that you obtained from the State of Wyoming?

A. It is.

Mr. Good: The plaintiff offers in evidence Exhibit 576, limiting, however, the offer as follows: said exhibit is offered as an admission by the State of Wyoming as to the validity of the appropriation under the Northport Irrigation District and as a recognition by the State of Wyoming of the rights of the landowners under said Northport Irrigation District to water from the North Platte River and from the Pathfinder and Guernsey Reservoirs not, however, conceding the power or right of the State of Wyoming to control water which has passed the state line dividing the states of Wyoming and Nebraska, and not admitting the power of the Wyoming water officials or the Wyoming Board of Control to place restrictions upon the use of water after it reaches the state of Nebraska. Said offer is further limited to the pages designated as 159, 160, 161 and 172, assuming, however, that Wyoming will make no objection to our failing to offer the detailed descriptions appearing on pages 162 to 171, in this portion of it, the limit of the offer being for the purpose of saving the record from being encumbered too heavily.

15010 Mr. Greenwood: Is that just descriptions?

Mr. Good: That is just descriptions; pages 162 to 171 are only descriptions of land, and we are offering the first two pages, 159 and 160, and page 171 showing how descriptions were made, and page 172; we make the further limitation upon this offer that in offering page 160 the State of Nebraska does not concede the right of the State of Wyoming to fix a priority date of December 6, 1904, for lands in Nebraska which are watered through a canal having its diversion point in Nebraska, and so far as the natural flow rights of the Northport Irrigation District, Nebraska is not conceding the claim of Wyoming that that date should be December 6th instead of September 19th as shown by the application filed in the name of the Sec-

retary of the Interior under date of September 19, 1904, which application is known as Application 768 and which was read into the record yesterday. Now, I have finished with the offer.

The Master: Does it appear that the land descriptions in Exhibit 576 are the same as Exhibit 573?

Q. Have you, Mrs. Thompson, compared the descriptions in Exhibit 573 with the descriptions in Exhibit 576?

A. I have.

Q. And are they the same?

A. They are.

Q. In each instance?

A. Yes, sir.

Q. And Exhibit 573 contains a reference to
15011 the page in Exhibits 576 where those descriptions are found; is that correct?

A. Yes, sir.

Mr. Good: Now, is there any comment counsel wishes to make in connection with this offer?

Mr. Warren: Colorado objects to the introduction of Exhibit 576 for the reason that the same is not material or relevant and shows upon its face that it is an attempt of the State Board of Control of the State of Wyoming to adjudicate concerning lands in the State of Nebraska.

(Nebraska Exhibit 576 is made a part of this record, being found in numerical order in supplemental volumes of exhibits.)

Mr. Good: Nebraska also offers Exhibit Number 577 with the same limitations and restrictions as stated with reference to Exhibit 576.

Mr. Warren: Colorado objects to the introduction of Exhibit 577 for the reason that the same is not material or relevant and shows upon its face that it is an attempt of the State Board of Control of the State of Wyoming to adjudicate concerning lands in the State of Nebraska.

Mr. Good: And with reference to Exhibit 577 this offer

is made only as a sample of the certificates issued by the State of Wyoming, and I assume that there will be no objection by any of counsel to this as only one sample out of the entire group, and may it be stipulated that
15012 similar exhibits to Exhibit 577 were issued with reference to each of the farm units in the Northport, as shown by Exhibit 576.

Mr. Greenwood: How is that, Mr. Good?

Mr. Good: That certificates similar to Exhibit 577 were issued to each of the farm units that are described in Exhibit 576, and Exhibit 577 is offered merely as a sample.

Mr. Greenwood: And the others are identical with the exception of names, and so forth?

Mr. Good: And descriptions of land, and so forth, but Exhibit 577 is offered under the same restrictions and limitations as Exhibit 576. Does Wyoming wish to comment or object to the offer?

Mr. Greenwood: I want to inquire with reference to this Exhibit 577.

Mr. Good: Yes.

Mr. Greenwood: Were you through?

Mr. Good: Yes; I was through.

By Mr. Greenwood:

Q. Mrs. Thompson, in Nebraska's Exhibit 573, the column designated "Page—Refer to Tabulation of Water Right Proof Exhibit:" please explain that a little further—what the word "Exhibit" means there, if it refers to any proof, if you know.

A. It refers to this record right here (indicating).

Q. That would be what exhibit?

A. That is Exhibit 576.

Q. Exhibit 573 does not indicate that the proof,
15013 the tabulation of the water right proof came from the Wyoming record, but that is a fact, is it not?

A. It is a fact. I wonder if I understand your question. It does agree with the tabulation on Exhibit 576.

Q. Does it agree with the tabulations on Exhibit 576?

A. On 573.

Q. Your memoranda?

A. Yes; it does.

Mr. Greenwood: That is all we have, Mr. Good.

Mr. Good: And you have no objections to any of the exhibits?

Mr. Greenwood: We are not making any objections to the exhibits.

Mr. Good: Then, that is all, Mrs. Thompson.

(Nebraska's Exhibit 577 is made a part of this record being found in numerical order in supplemental volumes of exhibits.)

* * * * *

15260 Q. Mr. Bashore, have you made an exhibit showing the main features of the Kendrick project?—and the present state of completion, and other related data?

A. Yes, I have.

(Whereupon, a document was marked for identification as Wyoming Exhibit No. 1.)

Q. Mr. Bashore, referring to the exhibit marked for identification Wyoming Exhibit No. 1, has that exhibit been prepared by you?

A. It has.

Q. And does that exhibit show in a general way the description and the location and the history and plan and features of the Kendrick project?

A. Yes.

Q. And there is, in addition to that, some other data upon the exhibit?

A. Yes.

Q. Now, with reference to the Seminoe Dam, what is the present state of completion of that structure, Mr. Bashore?

A. The Seminoe Dam is completed, and the Seminoe

power plant is rapidly nearing completion, and it will probably be in the trying-out process during the
15261 month of June. By that, I mean limbering up the machinery and trying out transformers, and so forth.

Q. Is there any water stored in the reservoir back of the Seminoe Dam at the present time?

A. Yes, sir, I believe about one hundred and eighty-five thousand acre feet.

Q. When will the power plant be ready for the delivery of power?

A. Approximately July 1st.

Q. Of this year?

A. Yes, 1939.

Q. Have you had anything to do with the negotiation of the contracts for the sale of power, Mr. Bashore?

A. Not a great deal. The negotiations for the sale of power were conducted by the Chief Electrical Engineer in Denver.

Q. Do you know whether contracts have been made for the sale of power that will be produced at the Seminoe Dam?

A. Yes, contracts have been made with the Rawlins Electric Company, the Cheyenne Fuel, Light & Power Company, the Colorado Public Service Company, and a contract has been submitted to the Department for approval as to form for the sale of power to the Western Public Service Company of Laramie, Wyoming. There has also been a Departmental approval of exchange rates for power with the North Platte project. This power would be delivered to the Gering substation at Gering, Nebraska.

15262 Q. Would that power be used in Nebraska?

A. Oh, yes, that portion that goes to the Gering substation.

Q. You mentioned Laramie and Rawlins and Cheyenne. They are, of course, located in Wyoming?

A. Yes.

Q. And power has been sold for use in Colorado?

A. Yes, the Colorado Public Service Company.

Q. Do you know what part of the power that the plant will be capable of producing has been sold, or whether or not it has all been sold?

A. Practically all of it.

Q. Now, with reference to the diversion dam at Alcova, is that complete?

A. The diversion dam at Alcova is complete with the exception of the parapet walls on top of the dam. That construction is usually deferred until the dam has reached its full settlement. They may be placed this year or possibly deferred until 1940.

Q. Is there water stored in the reservoir back of the Alcova Dam?

A. Yes, about one hundred and thirty-five thousand acre feet, I believe.

Q. What is the purpose of the Alcova Dam in the entire plan?

A. The purpose of the Alcova Dam is to provide diversion into the Casper Canal and also to provide a small amount of storage for the Kendrick or Alcova project. The upper ten or twelve feet would be available as storage for the Kendrick project.

15263 Q. One of the purposes is to raise the level of the water sufficiently high to make diversion possible into the canal?

A. That is correct.

Q. Now, what is the purpose of the Seminoe Dam in the entire plan of the Kendrick project?

A. The purpose of the Seminoe Dam is to store the surplus unappropriated flood waters for the Kendrick project and for the purpose of generating power.

Q. Now, with reference to the reservoir above the Alcova Dam, known as the Alcova Reservoir, I believe, is the water that is stored in that reservoir dead storage?

A. The major portion of it is dead storage, so far as the Kendrick project is concerned. In case of a dry year, and depending upon the purpose for which the water was stored, it would be possible to entirely drain the Alcova Reservoir for down-stream users.

Q. So that if it should become necessary in a dry

year, the reservoir could be completely drained for use below the Kendrick project?

A. Yes.

Q. And if you drained the water out, that water could not be used for the Kendrick project?

A. No, that is right. If you drained it all, of course, it would be below the level of the gate sill into the Casper Canal.

Q. To what extent has construction been completed upon the distribution system on the Kendrick project?

15264 A. The Casper Canal excavation is completed and the structures are nearly so. I believe the data sheet referred to as Wyoming Exhibit 1 shows it about ninety or ninety-five per cent complete.

• • • • •

15268 Q. I hand you an instrument which has been marked for use as an exhibit, and ask you what that is, Mr. Bashore.

A. Duplicate original of the repayment contract between the United States and the Casper-Alcova Irrigation District, dated August 3rd, 1935.

Q. Will you give the signatures that appear on it of the contracting parties—not the witnesses, but just the parties?

A. The United States, by Charles West, Undersecretary of the Interior, and the Casper-Alcova Irrigation District, by Daniel M. Haines, President.

Q. Now, referring to Exhibit No. 3, so marked for identification, that is a printed copy of the contract concerning which you have just testified, is it not?

A. Yes.

Mr. Wehrli: At this time, Wyoming offers in evidence the exhibit numbered Wyoming 1, Wyoming 2 and Wyoming 3.

• • • • •

15363 Q. Mr. Harnan, have you in your possession the order of adjudication or a copy of the order of adjudication of any of that land?

A. Yes, sir.

Q. Will you produce it, please?

A. Yes, sir, I have it over here.

(Whereupon, the witness produced two documents, which were marked for identification as Wyoming's Exhibits 7 and 8.)

Q. Mr. Harnan, handing you what has been marked as Wyoming's Exhibit 7, I will ask you if you know what that is.

A. Yes, sir.

Q. Will you state, please?

A. It is a tabulation of the certificate numbers, showing the adjudicated acreage in each unit in our district.

Q. Directing your attention to the first page of it, is that not a photostatic copy of the original records in the office of the State Board of Control, showing the adjudications on the various tracts of land?

15364

A. Yes, sir.

Q. And the water-rights therefor in the Goshen district?

A. Yes, sir.

Q. How many acres of land are adjudicated, if you know, in the Goshen district under that order?

Mr. Good: The same objection as last made, that it is not binding on Nebraska.

A. Forty-seven thousand eight hundred fifty.

Q. Now, Mr. Harnan, do you know whether or not if this order was entered—this order of adjudication which was issued by the State of Wyoming to the appropriators whose names appear in the order—do you know whether or not a certificate of appropriation was issued after this order was entered?

A. I don't think a certificate has been issued yet.

Q. Let me show you and call your attention to the certificate.

A. I thought you meant beside what is in there.

Q. No, what is in there.

A. Yes, there is a certificate issued for every one that is in there.

Q. I will ask you, if you know, if the certificate issued for each separate unit is a certificate in form as appears in Wyoming's Exhibit 8?

A. It is, yes, sir.

Q. With the exception of the name and the
15365 description of the land, and so forth, they are all similar in form to this certificate?

A. That is right. The certificates are on file in the office of the County Clerk's office downstairs, the original certificates.

Q. And there is one for each unit of land?

A. Yes, sir.

Mr. Greenwood: Wyoming now offers its Exhibit No. 7 and its Exhibit No. 8, and asks that they be received as evidence in the record.

Mr. Good: I think Nebraska objects as incompetent, irrelevant and immaterial, and not binding upon the State of Nebraska, and as self-serving, and hearsay, making, of course, no objection to the form of the exhibit as being photostatic copies, as we concede that they come within our stipulation.

Mr. Howell: We object for the reason that they are incompetent, irrelevant and immaterial, and not binding upon the State of Colorado. I should like that objection to go to each one of the series of exhibits, which I presume are similar.

Mr. Burke: The United States makes the same objections to Wyoming's Exhibits 7 and 8 as were made to Wyoming's Exhibits 4, 5, and 6.

* * * * *

15848 Mr. Greenwood: When Wyoming identified and offered its Exhibit 11, that was a printed

copy of the Goshen repayment contract, and it appeared that certain modifications which had been made
15849 in the contract did not appear in that copy. We now have a typewritten true copy of the original, which I have here from which these copies were made, and I will offer this copy as a substitute for the other exhibit. If any of the counsel want the witness called to identify it, that will be done, but it has been checked and I can exhibit the original to you. This contract bears the same date as the other one. It did not change the date. This has the signatures, and it shows the slight modifications that were made, and this is the contract that is now in effect. This is substituted for Exhibit 11.

Mr. Good: Wouldn't it be better to call it Exhibit 11-A? There were some references made in the record that would not be intelligible without Exhibit 11 being in the record.

Mr. Greenwood: That is agreeable. I will ask the reporter to mark this as Wyoming's Exhibit 11-A, and Exhibit 11 will have to remain in the record, I presume, Your Honor?

The Master: Yes, it will, under this arrangement. Do any of the counsel object to this going in without further identification?

Mr. Good: No, we have no objection.

Mr. Warren: May I ask Mr. Greenwood if there are other changes except Paragraph 8?

Mr. Greenwood: Yes, in this copy, Mr. Warren, in the middle of the contract there was a substitu-
15850 tion of Paragraph Numbers, but the bodies of the paragraphs were not changed.

* * * * *

16739 Mr. Wehrli: Wyoming offers in evidence its Exhibit 31. This is a photostatic copy of the record in the office of the State Engineer of the State of Wyoming of Permit No. 18488, which is the application

Transcript pp. 15849, 15850, 16739

and the permit on the Casper Canal in 1934. The application itself and the transfer of it was offered by Nebraska as their Exhibit 427, but there was not attached to it the land description and the other material to make it complete.

I want to call the attention of the Court to the general statement which is in the end of the exhibit, following the land description, and which is a statement made by the United States Reclamation Service, through H. W. Bashore, Construction Engineer. That statement describes briefly the applications that were filed in 1904, at the time that the permit for the construction of the Pathfinder Reservoir was granted, and, without going into detail on it, I want to call the Court's attention to this statement on the first page of that general statement—"Under said generally described applications, the United States proposed to reclaim by irrigation, under the provisions of the Reclamation Act, a gross area of about 693,304 acres, of which area about two-thirds is situate in the State of Wyoming and one-third is situate in the State of Nebraska."

Following that general statement is a copy of the original application made in 1904 for the Casper Canal, and immediately following that is a description of the lands crossed by the Casper Canal, as contained in the
1904 application, and the lands under the Cas-
16740 per Canal as contained in the 1904 application,
and following that description of the lands in the 1904 Casper Canal application is a general statement that was filed at the time of the applications which were made in 1904, that general statement having been made and filed by the Bureau of Reclamation at that time, and that describes the other applications and the canals and, in general, the land that it was contemplated would be reclaimed at that time under the water supply of the Pathfinder Reservoir.

Mr. Howell: That statement that you referred to, is that attached to and a part of the exhibit itself?

Transcript pp. 16739, 16740

Mr. Wehrli: Yes, and this is a photostatic copy of the complete record as it appears in the State Engineer's office.

The Master: Are you offering this Exhibit 31?

Mr. Wehrli: Yes, Wyoming now offers Exhibit 31.

Mr. Good: Nebraska, of course, makes no objection to the foundation, but if the exhibit is offered as substantive proof of the matters recited therein, particularly with reference to these general statements referred to, Nebraska objects as hearsay, self-serving, not binding on the State of Nebraska, but we, of course, concede that the document, Exhibit 31, is a correct copy of the document as it is on file with the Wyoming State Department.

* * * * *

16746 Mr. Wehrli: Wyoming's Exhibit 33 is an application and permit for the Seminoe Reservoir, a photostatic copy of the record as it appears in the office of the State Engineer of the State of Wyoming. Wyoming offers Exhibit 33.

The Master: Objections to this exhibit may be reserved until tomorrow.

Mr. Wehrli: Wyoming's Exhibit 34 is an application and permit for the construction of the Alcova Reservoir, and is a photostatic copy of the record as it appears in the office of the State Engineer of the State of Wyoming. We offer in evidence Exhibit 34.

16747 The Master: It may be understood, as to all of these exhibits, that objections may be made tomorrow.

Mr. Wehrli: Wyoming's Exhibit 35 is a photostatic copy of the application and permit for the Seminoe power plant, and is a photostatic copy of the record as it appears in the office of the State Engineer of the State of Wyoming. The permit number is 18681. At this time, we offer Exhibit 35.

Transcript pp. 16740, 16746, 16747.

Mr. Howell: Mr. Wehrli, is the E4 any part of the permit number?

Mr. Wehrli: No, that is part of the filing number. The permit number is 18681, and that E4 is the filing number of the map, I believe.

* * * * *

18647 Wyoming's Exhibit 58 is a list of the water-rights as they appear on record in the office of the State Engineer and the Board of Control pertaining to the La Prele project lands, or portions of them, and if you want to identify those various rights with the former Wyoming exhibits, I can give you that information. Permit 15661 is found in Wyoming's Exhibit 47 at Page 2; Permit 15664 is found in Wyoming's Exhibit 6 at Page 233; Permit 15869 is found in Wyoming's Exhibit 47 at Page 2; Permit 15876 is found in Wyoming's Exhibit 6 at Page 236; Permit 16986 is found in Wyoming's Exhibit 6 at Pages 176 and 177; Permit 17956 is shown in Wyoming's Exhibit 6, Page 260; Permit 17957 in Wyoming's Exhibit 6, Page 266, Permit 17955 in Wyoming's Exhibit 6, Page 266; Permit 1430 Enlargement shown in Wyoming's Exhibit 6 at Pages 137 to 145, inclusive; Permit 1670 Enlargement found in Wyoming's Exhibit 6 at Pages 154 and 155; Permit 2968
18648 Enlargement found in Wyoming's Exhibit 6 at Page 210; Permit 4530 Enlargement found in Wyoming's Exhibit 46 at Page 28; Permit 4531 Enlargement found in Wyoming's Exhibit 6 at Page 254; Permit 4589 Enlargement found in Wyoming's Exhibit 46 at Page 29; Permit 4682 Enlargement found in Wyoming's Exhibit 46 at Page 29; Permit 4759 Enlargement found in Wyoming's Exhibit 47 at Page 2; Permit 4760 Enlargement shown in Wyoming's Exhibit 6 at Page 260 and Wyoming's Exhibit 47 at Page 2; Permit 5054 Enlargement is found in Wyoming's Exhibit 46 at Page 31; Permit 728 Reservoir found in Wyoming's Exhibit 6 at Page 141; Permit 1581R, Wyoming's Exhibit 6 at Page 172; Permit 4636R, Wyoming's Exhibit 46 at Page 37.

Transcript pp. 16747, 18647, 18648

There is one further that appears on the first page—Permit 18709 at Page 19 of Wyoming's Exhibit 46.

The tabulations and data shown on this exhibit are prepared by the State Engineer's office under Mr. Bishop's direction and instructions, and is supposed to show accurately these water-rights as they are found on the records.

Wyoming's Exhibit 59 contains a list of the land adjudicated showing the various permits under which these unadjudicated lands appear of record, and are lands in addition to the 10,311 acres adjudicated that are supplied with water under the La Prele project.

Wyoming offers these Exhibits 57, 58 and 59, and makes the offer as to each one of them separately.

* * * * *

18656 Q. In connection with the distribution of water, would you describe a little more fully what the project consists of, if you know, besides the canals? You have the West Side Canal and the La Prele ditch. Now, is it all direct application of water?

A. No, we have a reservoir.

Q. Where is that reservoir? Is it shown on that map, the location of it?

A. Yes, right there (indicating).

Q. That is from what stream?

A. From La Prele, Reed, Gould and Buckshot Creek.

Q. Is it a channel reservoir?

A. Yes.

Q. On what stream?

A. La Prele.

Q. And its capacity is what, do you know?

A. Twenty thousand acre feet.

Q. Is it in operation?

A. Yes.

Q. How long has it been in use, approximately, if you have that in mind?

18657 A. Since about 1909 or 1910.

Q. Do you know, Mr. Roush, anything about

the cost of the project and the development of these reservoirs and canals?

A. In the neighborhood of a million dollars.

Q. By that, you mean probably more than nine hundred thousand dollars?

A. Yes.

Q. How much water are you able to obtain for storage in the reservoir each year?

A. That varies, not to exceed twenty thousand acre feet, however.

Q. And the low figure would be what, in the last few years—something less than twenty thousand?

A. Oh, yes.

Q. How much less?

A. I believe we had one year when we could have safely said that we didn't have any storage.

Q. You have named some of the streams that contribute to the filling of the reservoir. Where are they located with respect to the location of the reservoir?

A. They are in the mountains south and west of the reservoir.

Q. Are they tributaries of La Prele Creek?

A. No.

Q. They have a direct connection with the reservoir, do they, or how do you get water into the reservoir from them?

A. Transmountain diversion.

Q. Direct into the reservoir?

18658 A. Into La Prele Creek.

Q. You use La Prele Creek as a conveyor?

A. Yes, sir.

Q. Part of the way?

A. Yes, sir.

Q. What portion of that reservoir water is brought in from those transmountain diversions, if you know?

A. That is a small part of it, a very small percentage.

Q. Those streams that furnish the transmountain water, of what watershed are they a natural tributary?

A. Wagon Hound and La Bonte.

Q. And they are tributaries of the Platte River?
A. They are tributaries of the Platte.
Q. So that all of the water that is obtained from the natural streams, either transmountain or otherwise, is taken from the natural drainage area of the Platte River?
A. Yes, sir.
Q. Were you acquainted with the project intimately prior to 1929?
A. Somewhat, yes.
Q. Were you farming on that project?
A. Yes.
Q. Before that time?
A. Yes, sir.
Q. What is the fact, Mr. Roush, as to the amount of water that has been available for use on the
18659 project lands since 1931, as compared with the quantity of water available during the years immediately preceding that date?
A. Very much less.
Q. What do you base that answer on—your own knowledge?
A. Yes.
Q. You know that, do you?
A. Yes.
Q. What is the fact with reference to how much water you have been able to get for storage since 1931 each year, or the various years, if you know?
A. It has varied very much since 1931.
Q. Have you had any year since 1931 when you got a full reservoir?
A. Yes.
Q. Do you recall what years?
A. 1937 was one, and I couldn't say for sure, but I believe 1935, but I might be mistaken about that.
Q. What did you get in 1935—a fair supply?
A. Pretty fair, yes.
Q. What about this year, 1939?
A. We were short this year.
Q. Has there been, Mr. Roush, more water taken and

used on the La Prele project lands since 1931 than there was before that time?

A. No, there couldn't be.

Q. Less water?

A. Yes.

18660 Q. Would you say considerably less?

A. Yes.

Q. Have you observed whether or not the water that is used on the La Prele project lands, whether any portion of it goes to the Platte River as return flow?

A. Yes.

Q. What would you say as to that?

A. I never did make any measurements on it but there is quite a little return flow.

Q. Can you see it?

A. Oh, yes.

Q. In stream flow or in water coming out of the river bank or creek bank?

A. The part of it that I have reference to is stream flow.

Q. How would you determine that? Can you state how you determine that is return flow water?

A. If you have got a draw that is ordinarily dry, and then you start irrigating and this draw starts running water, that is return flow water.

Q. That is what you have in mind?

A. Yes.

Q. Are there any of these streams, any natural tributaries either of La Prele Creek or of the river, below the location of the reservoir?

A. They all are.

18661 Q. You say they are all below? All of those return to the river?

A. Yes.

Q. Have you observed those streams as to the times of the year when they are flowing a substantial quantity of water and the times when they are not?

A. Yes, sir.

Q. And have you made any observations of the characteristics of those streams from which you could state

whether they are carrying return water back to the river?

A. Yes, I think so.

Q. What observations have you made along that line?

A. We have at least three ditches that pick up out of draws that are ordinarily dry, and during the forepart of the season you couldn't get any water or a very small amount of water into your ditch out of those creeks, and during the latter part of the season there would be quite a quantity.

Q. What about the latter part of the season—about what time would that be?

A. I would say any time after the middle of June.

Q. Do those water-ways continue to flow water clear through the season?

A. Yes, they flow some pretty good streams right now.

Q. Through July and August?

A. Yes, and even now.

18662 Q. Have you observed that this fall?

A. Yes.

Q. Has there been any rain water to cause this flow of water this fall?

A. No. We had one snow but there was no run-off at all.

Q. You would say that this water that is running there now would be water that is coming back off the project—return flow?

A. Yes.

Q. Mr. Roush, how many acres of land at the present time, referring to the last year, 1939, or 1938, was actually irrigated within the project, if you know?

A. This past year there was very little.

Q. About what would that be?

A. I would say about six thousand.

Q. What is the reason there wasn't more?

A. A shortage of water, the dry weather.

Q. You have on your Exhibit 58, the last page, Mr. Roush, a list there of 10,311 acres of land that has adjudicated water-rights. Do you know or are you familiar with that 10,000 acres of land?

A. Yes.

Q. What would you say as to whether that land has been supplied with water at any time prior to this year?

A. You say, has it been supplied with water?

Q. That is right.

A. Why, yes, I would say it has.

18663 Q. And the reduction in acreage this past year, has that been the condition on the project for a number of years?

A. Yes.

Q. How many years, Mr. Roush?

A. The greater share of them since 1929, or since 1930, we will say.

Q. What is the cause of that reduction?

A. Shortage of water.

Q. Is it caused because there is no one there to farm the land?

A. No, the greater share of it is the shortage in water.

Q. When, if you know, Mr. Roush, in what year or what years there was as much as ten thousand acres irrigated in one year?

A. In 1929, I would say there was ten thousand irrigated.

Q. Would you say that the full 10,311 acres was irrigated that year?

A. Well, no, but it is awful close to it. Practically all of the acreage was irrigated that year, although there might be some little corners around in a fellow's field where he wouldn't irrigate.

Q. Practically a full irrigation that year, however?

A. Yes.

Q. Now, have you any lands in the project that are supplied with water which are not in the adjudicated land, the 10,311 acres, that have been at any time supplied with water?

A. Yes.

Q. How many acres of that?

A. Approximately twelve hundred acres.

Q. I want to direct your attention to the ex-
18664 hibit 59. Can you state whether or not acreage appearing there in that exhibit is the land that has been supplied with water that is not in the adjudicated list?

A. Part of that land has been supplied with water. I was mistaken in your question. I thought you had reference to direct-flow rights that we delivered water for.

Q. I mean altogether, Mr. Roush, the total acreage that you have been able to supply water for, either by storage water or direct flow. I wanted to get the full acreage that has been irrigated, no matter whether it was storage water or direct-flow water.

A. In regard to the project, that would stand all right.

Q. What would you say was the total acreage, then?

A. For the project?

Q. Yes, that is irrigated when you have a water supply for it.

A. About 11,152.

Q. Is there any acreage in addition to that that has at any time to your knowledge been supplied with water? In other words, is that the total, something over eleven thousand acres, so far as you know, that has been irrigated?

A. That is all that I know of.

Q. You referred to certain lands on the cover page of Exhibit 59, the first line there, as the "Total Project Area under permits for original supply," and you give that acreage as 16,360. Do you know what that refers to, Mr. Roush, that 16,360 acres?

A. Yes, that was the original permits that
18665 was granted for that project.

Q. That is the total acreage in the original permit?

A. Yes, that they were supposed to have been allowed to sell contracts for.

Q. Now, then, we have the next line here as "Total Area under Contract, 11,152." Is that the figure that you had in mind as the total area that had been irrigated, or approximately so?

A. Yes.

Q. What is the significance of the statement "under contract"?

A. To get a water-right, or a right to use water under the project, you had to contract with the company for a certain acreage.

Q. That means that arrangements have been made with the operating company by the parties farming the 11,152 acres to contract in some way whereby they were entitled to water?

A. Yes, sir.

Q. Mr. Roush, with reference to the settlement of this project, what kind of lands were they, or how were they classified? I have in mind whether it was Desert land or Carey Act land.

A. A Carey Act project.

Q. So that all of the lands that went into cultivation had to get their water supply by reason of some kind of a contract existing between the settler and the owner of the project?

A. Yes.

Q. And that is what that term means—"contract lands"?

A. Yes.

18666 Q. The next line of that Exhibit 59 contains a figure of 10,311 acres. That is the same as the last column in Exhibit 58, the adjudicated acreage, is that true?

A. Yes.

Q. What, if anything, Mr. Roush, has been done with the permit lands over and above the contract lands, in other words, the difference between the 16,360 and the 11,152?

A. You say, what has been done with that?

Q. Yes, toward reclaiming them, if anything.

A. Why, nothing that I know of.

Q. Nothing that you know of? In other words, you have got about six thousand acres described in the original permit that at this time has neither been adjudicated nor irrigated?

A. And no contracts sold.

Q. And no contracts out for it?

A. No, sir.

Q. So that the land that is being served with water when it is available under contract is the 11,152 acres?

A. Yes.

Q. Is it possible to irrigate any land there, Mr. Roush, within the project that does not have a contract to be served with water?

A. Yes, the difference between that 11,152 and the 16,360, that is all irrigated.

Q. I guess you didn't quite get that question, Mr. Roush. I said, is it possible to obtain water from
18667 the company to irrigate lands unless the party desiring to irrigate it has a contract?

A. No.

Q. It is all under contract?

A. It is all under contract. You can't draw water unless you do have a contract.

Q. In supplying these lands with water, you have direct-flow rights and storage rights?

A. Yes, sir.

Q. How do you administer the delivery of water?

A. Well, it has been the custom that until the reservoir was filled that you would be drawing storage water. After the reservoir is filled, then it becomes direct-flow water.

Q. That is the practice for the administration of the water, the distinction between direct-flow water and storage water for project use?

A. Yes.

Q. Do these lands, these contract lands, all have an equal proportionate share in the direct-flow rights?

A. Yes, sir.

Q. And they all participate on the same basis in the storage water?

A. Yes.

Q. There are other rights, Mr. Roush, whose interests have become commingled, so to speak, with the storage

project—other independent rights. How do you take care of those?

A. They are delivered as direct-flow water.

18668 Q. You deliver them water from the reservoir as direct-flow water?

A. Yes, through the reservoir.

Q. In other words, you are permitted, through an arrangement for operating purposes, to capture that water that is available to be captured in the reservoir, but you have to release it through the reservoir?

A. Yes.

Q. And you take water sufficient to replace the direct-flow quantities of the people that have other rights?

A. Yes.

Q. Whose priorities are earlier than the reservoir?

A. Yes.

Q. That is the practice, is it?

A. Yes, sir.

Q. What is the length of the irrigating season, Mr. Roush, for the lands in this project?

A. About six months.

Q. When does it commence, as a rule?

A. As a rule, I would say in the forepart of May.

Q. And continues until when?

A. The first of October.

* * * * *

Cross-examination by Mr. Good.

18672 Q. Mr. Roush, I notice on Exhibit 58 that as to some of these permits there has been a limitation of time for completion of beneficial use, and in some of these instances the time expires December 31st, 1939, and in one instance apparently on December 31st, 1940. Have there been any further extensions?

A. No, sir.

Q. Is it contemplated that the management of the project will ask for another extension?

A. Yes, sir.

Roush—cross by Nebraska Transcript pp. 18668, 19672

18673 Q. That is, you do not expect to let this next December 31st pass without an application for extension?

A. No, we do not.

Q. How much time do you expect to ask for?

A. At least another year.

Q. What is the reason for that?

A. Why, some of them have not made proof of the appropriation of water, and it is sometimes hard to educate them along the line that they should make those proofs, and it takes time.

Q. Do you expect to develop more land?

A. Than what?

Q. Than is now being irrigated?

A. Just how do you mean?

Q. I note that your total of permit land is 16,360, and the adjudicated land is 10,311. Presumably that would leave six thousand acres of land for which there is a permit but no adjudication, and your Exhibit 59 shows that 841 acres is under contract but unadjudicated, a total of 11,152, that still leaves 5,200 acres of land which is neither under contract nor being irrigated but which might be developed within the period permitted by the Department for application to beneficial use. Do you expect to bring any of that fifty-two hundred acres under the ditch?

A. So far as I know, they do not.

Q. That is merely for the protection of those 841 acres that you ask for an extension of time?

18674 A. There is always a possibility that we might get water sometime and could go ahead and develop it.

Q. You expect to if you can get enough water?

A. I think so.

Q. You expect to keep those permits alive until you do get enough water and develop them, is that right?

A. I couldn't say as to that, Mr. Good. The main interest is this 841 acres.

Q. Now, on the last sheet of Exhibit 58, I note there is permit lands—and that would include the adjudicated,

of course—but permit lands totaling 16,360 acres under the original supply heading, but some of the items under the supplemental supply are for as much as 17,601. How is that explained? Is that a supplemental supply for 17,000 acres or an original supply for only 16,000?

A. I believe that covers the same land on the Upper La Prele, where we went through with our ditches. That is not property of our company, although application was made for that acreage, or that acreage was all made under the same application, but some of the land belonged to Thomas Verdon, and some to Sims.

Q. Is any of that land being supplied with a supplemental supply from the La Prele project?

A. Yes.

Q. Has proof been made on some of that land?

A. I couldn't say whether proof had been made on it or not. We have nothing to do with it only we run
18675 our water down through there, we will say, in the Wagon Hound and the Little La Prele, and those two fellows as they need it, they take water out and use it on their lands, just as a supplemental supply on the other lands.

Q. Do they have contracts with you for that?

A. Yes, sir.

Q. And they pay you for it?

A. No, they don't pay. It is just a—I wouldn't say whether it was a contract, either, but it is just agreement between us. It is not a contract, the same as the other contracts.

Q. Are these waters that they take and put on their lands—are they return-flow waters?

A. No.

Q. They are waters of the original supply?

A. Yes.

Q. From storage or natural flow?

A. No storage—direct flow.

Q. Now, this map, Exhibit 57, contains a legend at the top showing that two of the classes of marked lands are

under Territorial appropriations. They are not listed on Exhibit 58, those appropriations, are they?

A. You say there are two?

Q. Yes, in the upper left-hand corner of that legend, there is "Table Mountain, D. Territorial, and Permit 41." That is not listed on Exhibit 58, is it?

A. I don't imagine it is.

18676 Q. Do you know how many acres there are of that? That is sixty-seven acres, isn't it?

A. Just in that neighborhood, yes.

Q. And eighteen acres under an appropriation of the fall of 1889 and forty-nine acres under June 25th, 1900?

A. I don't know where you are reading that from.

Q. I am not reading it off the map, but that is some other information that I have in mind. I want to know if that is correct, if you will say that it is correct.

Mr. Greenwood: That is not project land, Mr. Good.

Mr. Good: It is listed on this map, and we want to eliminate that from the project if we can.

Mr. Greenwood: We are not including it in the project. It happens to be listed there.

Cross-examination Resumed by Mr. Good.

Q. And the others are "Powell and Ayres, D. Territorial"—whatever that "D." is—that has one hundred and eighty acres under an appropriation of April 1st, 1884, is that right?

A. I think so, yes.

Q. Except for those two, and the group commencing in the second column, under the second column under the heading of "Legend," the lands shown are all project lands, are they?

A. There is that second one under that second column—

Q. The Powell?

18677 A. The Powell Territorial.

Q. Those are the lands that you supply with your system of ditches, are they?

A. Just a minute. That Powell D. Territorial, I am not sure about that, no. No, that is not included in our contract.

Q. So far as your project is concerned, the senior priority is in 1905, is it not?

A. Yes.

Q. And that land that you have described in the total amount of 11,152 acres, that has the oldest priority?

A. Yes.

Q. That is correct, isn't it?

A. Yes.

Q. And that is junior to the Pathfinder Reservoir, the Interstate Canal, and the Gering-Fort Laramie Canal, is it not?

A. So far as I know, it is, yes.

Q. And your reservoir permits are also junior to those projects that I have mentioned?

A. Yes.

Q. All of the sources of supply that you mentioned for your reservoir—that is, La Prele Creek and the system of Wagon Hound Creek and the system in La Bonte Creek—all of those are tributary to the North Platte River?

A. Yes.

Q. And empty into the North Platte River be-
18678 tween Casper and Guernsey?

A. Yes, sir.

Q. Has there ever been any regulation that you know of of the La Prele operations for the benefit of the Interstate Canal or for the benefit of the Gering-Fort Laramie Canal?

A. No.

Q. There may be times when those two canals have run out of natural flow and the La Prele is using natural flow, isn't that correct?

A. I don't know whether there is or not. I haven't heard of anything like that, but that could be, I suppose.

Q. At any rate, there never has been any regulation?

A. No regulation.

Roush—cross by Nebraska Transcript pp. 18677, 18678

Q. And there may be times that you are storing in La Prele Reservoir when the Interstate Canal or the Fort Laramie Canal have run out of natural flow?

A. I don't know.

Q. Now, since 1931 there have been two seasons when the La Prele Reservoir was filled and three seasons when it was almost filled, isn't that right?

A. I imagine that is pretty close to right.

Q. In 1933 you had a maximum storage on June 1st to 3rd of 20,000 acre feet; and in 1937, on June 15th, 20,000 acre feet, and in 1928, on June 1st, you had 19,600 acre feet, which would be only four hundred feet short of capacity?

A. Yes.

Q. And you said there was one year in that
18679 series since 1931 when you got practically no water in the reservoir?

A. Yes.

Q. Are you referring to 1934, when the maximum storage was thirty-seven hundred acre feet?

A. Yes.

Q. And you consider that negligible?

A. Practically no water.

Q. You mean that if it is spread over the lands that you have to spread it over, it would be practically no water?

A. Each one's proportionate share after the delivery on the land was one-eighth of a foot that year.

Q. What was that?

A. One-eighth of a foot.

Mr. Greenwood: That is one-eighth of an acre foot?

The Witness: Yes, they got water enough to cover one-eighth of an acre foot per acre, and that is just enough for a garden for each rancher.

* * * * *

Cross-examination by Mr. Stoddard.

18685 Q. Mr. Roush, are the contracts, the water-right contracts that you referred to between

your Association and the farmers filed with the State Board of Control?

A. I think so.

Mr. Stoddard: Do you know about that, Mr. Greenwood?

Mr. Greenwood: Yes, they should be. That is the requirement.

Q. Can you tell us approximately how many acre feet were added to your project supply in any one year by reason of this transmountain diversion that you have
18686 testified about?

A. Yes.

Q. How much?

A. Forty-five hundred feet in any year.

Q. Is that the maximum?

A. Yes, sir.

Q. What is the smallest amount in any one year since you have had this transmountain diversion with intercepting ditches?

A. In one year we didn't have any.

Mr. Stoddard: That is all.

Redirect-examination by Mr. Greenwood.

Q. You stated to Mr. Good that you didn't know exactly whether the full 11,152 acres was the total amount irrigated in a given year, and it might be substantially less than that. What did you have in mind when you said that it might be substantially less?

A. Because there might not be water enough to irrigate the full eleven thousand acres.

Q. That is the reason?

A. Yes.

Q. That would be the only reason?

A. Yes.

Q. Then, would it be true, when there has been a full reservoir, as an example, that full acreage has been irrigated?

A. No, you can't irrigate the full acreage with a full reservoir.

Q. How do you do that? For instance, when
18687 would you get water for the 11,152 acres—under what conditions?

A. You would have to have a full reservoir and then practically all of your direct flow for a considerable length of time.

Q. As a rule, when you get a full reservoir you get a pretty good direct flow?

A. Yes, but not always.

Q. No, not always, but usually?

A. Yes, because it comes to the proposition there that maybe, where you won't start irrigating until the 20th or the 25th of May, the reservoir might fill up before the natural users get to using water to amount to anything.

Q. When you said that there might be substantially less than the eleven thousand acres that were irrigated, were you implying that you didn't know how much from year to year is actually irrigated?

A. I don't know that I could tell you exactly every year, but I know there is not water enough and has not been water enough each year of late years to irrigate the total of eleven thousand.

Q. Do you know when the total acreage is being irrigated, from your own knowledge of conditions in your position on the project?

A. Whenever there is water enough it will be irrigated.

Q. When was it irrigated, Mr. Roush?

A. I would say the whole thing was irrigated in 1929.

Q. And since that time, has there been any time when it was all irrigated?

A. I haven't irrigated all of my place every
18688 year since 1929.

Q. For what reason?

A. The lack of water.

Q. That is the only reason?

A. Yes, sir.

* * * * *

Recross-examination by Mr. Stoddard.

18690 Q. Do you have a record of the transmountain diversions?

A. Yes.

Q. Do you have that available here?

A. I have two or three of them here. I don't have several years. I don't believe I have the last year.

Q. Can you make that available for us through Mr. Greenwood?

A. Yes.

Q. If you would, please. Now, you started in 1932, did you not? Exhibit 58 shows the completion in 1932 of the transmountain diversion and the intercepting ditches.

A. I know I haven't got this year. Our commissioner hasn't sent in this year's yet.

Q. Would you read into the record what you have, Mr. Roush?

A. You mean at the present time?

Q. Yes.

A. 1934, 1936 and 1937 seems to be all that I have with me. In 1934 it was five hundred and twenty—

Q. That is acre feet?

A. That is acre feet.

Q. And the other years that you have now?

A. It is funny, but I thought I had all of those
18691 along with me, but I can't find them. It was thirteen hundred and ninety-five in 1936, and 2,276 in 1937.

Q. Do you recall what year it was that you got the forty-five hundred acre feet that you referred to?

A. I will have to take that back. This last year was the second feet. I gave you that in second feet. One hundred and twenty-six acre feet is correct for 1936, but this last year I gave you second feet, and that is 4,552 acre feet.

Q. Are the other figures that you have given me in acre feet or second feet?

A. 1936 was second feet, and 1934 is correct, five hundred and twenty acre feet.

Roush—recross by United States *Transcript pp. 18690, 18691*

Q. And in 1936?
A. That was in acre feet.
Q. Thirteen hundred and ninety-five acre feet?
A. Yes, that is correct.
Q. Can you tell us the approximate cost of the construction of the intercepting or transmountain ditches?
A. About three thousand dollars.

Mr. Stoddard: That is all.

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20048 Mr. Burke: United States' Exhibits 7-a and 7-b are withdrawal and restoration orders made by the Secretary of the Interior, pursuant to Section 3 of the Reclamation Act of June 17th, 1902. Exhibit 7-a consists of Pages 1 to 255, inclusive, and Exhibit 7-b is a continuation of Exhibit 7-a, consisting of Pages 256 to 502, inclusive. The several pages in the exhibits are photostatic copies of official records of the United States General Land Office in Washington, D. C. They relate to the lands withdrawn and, in some instances, restored to public entry, in connection with the North Platte project in Wyoming and Nebraska, and also the Kendrick project in Wyoming.

The United States offers Exhibits 7-a and 7-b.

Mr. Good: May I ask, Exhibits 7-a and 7-b are confined to the North Platte project, are they? If not, what projects do they cover?

Mr. Burke: I stated that they covered the North Platte and the Kendrick, and I believe the first sheet of the exhibit covers lands which were originally considered in connection with the so-called Sweetwater project in the vicinity above Pathfinder Reservoir, and perhaps the Saratoga project in that area. The Sweetwater project was the first project investigated by the Reclamation Service in 1902.
20049

Mr. Warren: May I ask whether this exhibit shows

Transcript pp. 20048, 20049

any withdrawals and restorations in Jackson County, Colorado?

Mr. Burke: I don't believe it does. In fact, I am sure it does not.

Exhibits 7-a and 7-b are companion exhibits to the township plats showing the withdrawals and restorations, which is United States Exhibit 8, the large volume which I have presented to you.

Mr. Warren: May we be instructed a little how to use Exhibit 8, Mr. Burke?

Mr. Burke: I will say that Exhibit 8 will be later explained by one of our witnesses. We would like to put this documentary evidence in now, and then later it will be explained.

The Master: These pages are in the form of a recommendation of the Acting Director, recommending the withdrawal or the restoration, signed by the Acting Director, and then in the lower left-hand corner is a notation—"Approved and referred to the General Land Office for action." Is this recommendation always acted upon by the General Land Office in accordance with the recommendation?

Mr. Burke: That is true, yes. The procedure is this—as a general rule, the field officer, the project superintendent or construction engineer or whoever happens to be in charge of the project, after investigation will make recommendations as to withdrawals or restora-
20050 tions of land, and those recommendations are acted upon by the Commissioner of Reclamation, and he makes his recommendation to the Department of the Interior. One of the executive officers of the Department, either the Secretary himself or the Assistant Secretary in charge of Reclamation affairs, will then approve the recommendation. On the basis of his approval, the General Land Office makes the proper notation on its tract books in that office.

Transcript pp. 20049, 20050

The Master: Can it be assumed that the General Land Office will always follow the recommendation or always do follow the recommendation?

Mr. Burke: Yes, that is true.

Mr. Good: Is there any law requiring the General Land Office to follow the recommendation?

Mr. Burke: I don't know, Mr. Good.

Mr. Good: I mean, how do we know that the action will be taken?

Mr. Burke: I think there is a presumption that officials perform their duties.

Mr. Good: But there is no such law?

Mr. Burke: I think it is his duty to administer the lands in accordance with the rules and regulations of the Secretary of the Interior.

The Master: Of course, this is not exactly in the form of an order, but it is the approval of a recommendation.

I suppose the question that Mr. Good has in mind
20051 is whether the General Land Office has a further discretion that it may exercise, either in accordance with or in opposition to the recommendation. In other words, is the action of the General Land Office purely ministerial?

Mr. Burke: That is correct. The action of the General Land Office is ministerial. The discretionary action is vested in the Secretary of the Interior, and when the recommendation has his approval, the discretionary action has been taken. Therefore, the work of the General Land Office is purely ministerial. It has no further discretion to exercise in the matter.

Now, if Your Honor will turn to Page 322 of Exhibit 7-b, there you will see the notation that "The foregoing recommendation is hereby approved, and it is so ordered. The Commissioner of the General Land Office is hereby

Transcript pp. 20050, 20051

authorized and directed to cause the records of his office and of the local land offices to be noted accordingly," and that is signed by A. A. Jones, First Assistant Secretary.

We offer United States' Exhibits 7-a and 7-b.

Mr. Burke: United States' Exhibit 8, which has been distributed, consists of a map which shows the existing withdrawals under Section 3 of the Act of June 17th, 1902, in the North Platte Valley, and the existing withdrawals are shown in green. In addition to the
20052 map, the exhibit consists of township plats in Nebraska and Wyoming, showing the history of the withdrawals and the restorations under the orders which are in Exhibits 7-a and 7-b. This exhibit will be explained later by a witness who is familiar with it and with the procedure.

The United States offers its Exhibit 8.

Mr. Burke: United States' Exhibit 9 is a public document, published by the Department of the Interior, known as a General Reclamation Circular, which was approved by the Secretary of the Interior on May 18th, 1916. It contains the laws and regulations made to that date relating to the reclamation of arid lands by the United States.

The purpose of the exhibit is to show the rules and regulations which were promulgated by the Secretary of the Interior between the period of 1902 and 1916, governing the use of water under the Reclamation Act, the manner of acquiring rights, and other general information relative to the administration of the Reclamation Act, insofar as the right to the use of water is concerned. I will state that circular letters have been issued since 1916 which changed some of the regulations.

The Master: The regulations are up to Page 39, I suppose, and they are followed by the statutes?

Mr. Burke: Yes, those are the statutes from Page 39 on. The regulations are contained in Pages 1 to
20053 38, inclusive. You will observe on Page 38 that the regulations were forwarded by A. P. Davis.

Transcript pp. 20052, 20053

who at that time was Director and Chief Engineer of the Bureau of Reclamation, and that they were approved by Andrieus A. Jones, First Assistant Secretary of the Interior, and the regulations were sent to the local land offices by Clay Tallman, Commissioner of the General Land Office at that time.

I can state in general that the circular is in use today in the Bureau of Reclamation in the administration of the Reclamation Act.

The United States Exhibit 9 is offered.

Mr. Burke: United States' Exhibit 10 is a photostatic copy of a document filed by John E. Field with the State Engineer of Wyoming, in connection with the construction of the Pathfinder Reservoir. The document is identified in the records of the State Engineer's office of Wyoming as Application No. 609 Reservoir.

The United States offers its Exhibit 10.

Mr. Warren: Isn't there a duplicate of this exhibit already in the record?

Mr. Burke: I don't know, Mr. Warren. We checked the record, and where we found that there were exhibits already in we have decided to adopt those exhibits, so I do not believe there is a duplicate of this in the record. It was not our intention to duplicate any exhibits.

20054 Mr. Burke: United States' Exhibit 11 is a photostatic copy of a document filed with the State Engineer of Wyoming by John E. Field, who was the Project Engineer in charge of the North Platte project. The document covers the enlargement of the Whalen Falls Canal, the enlargement to be accomplished by the United States. In the records of the State Engineer of Wyoming, the exhibit is identified as Application No. 1398 Enlargement.

United States' Exhibit 11-a is a photostatic copy of a document filed with the State Engineer of Wyoming by

Transcript pp. 20053, 20054

Mr. C. F. Gleason, Superintendent of Power, Bureau of Reclamation, Guernsey, Wyoming, which consists of a petition for the amending of the land description and the amending of the canal location and point of diversion in Permit No. 1398 Enlargement, which is identified in this record as United States' Exhibit 11. In addition to the petition there are several pages numbered 4 to 30, inclusive, showing the land descriptions and the canal locations, the canal involved being the Interstate Canal of the North Platte project.

Mr. Wehrli: Mr. Burke, with reference to United States' Exhibit 11-a, does that exhibit show any place within it what action was taken on the petition? I fail to find it in looking at it hastily.

Mr. Burke: It does not.

20055 Mr. Wehrli: Do you have any other exhibit showing what action was taken on the petition?

Mr. Burke: No, we do not.

The United States offers Exhibits 11 and 11-a.

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20057 Mr. Burke: United States' Exhibit 17 is a photostatic copy of the documents on file in the office of the State Engineer of Wyoming in connection with the construction of the Fort Laramie Canal of the North Platte project. The original application was filed by John E. Field, in behalf of the United States, on November 26th, 1904. As a part of the exhibit is a petition filed on March 21st, 1935, by C. F. Gleason, Superintendent of Power, Bureau of Reclamation, Guernsey, Wyoming, for amending the land description and amending the canal location. The exhibit is identified in the records of the Wyoming State Engineer's office as Permit No. 18544.

The United States offers Exhibit 17.

Mr. Burke: I would like to refer back to United States' Exhibit 11-a, in answer to the question asked by

Mr. Wehrli, Counsel for Wyoming, as to whether or not the petition for amending the land description and amending the canal location and point of diversion in Permit No. 1398 Enlargement for the Interstate Canal was approved. On the third page of the exhibit appears the endorsement—"Petition Approved, September 20, 1934, Signed Edwin W. Burritt."

Mr. Stoddard: That is the third page of Exhibit 17?

Mr. Burke: No, the third page of Exhibit 11-a.

20058 Mr. Burke: United States' Exhibit 18 is a document filed by Andrew Weiss, Project Superintendent of the North Platte project of the Bureau of Reclamation, in connection with the diversion of water from the North Platte River for the operation of the Lingle Power Plant of the North Platte project. The exhibit is a photostatic copy of the record in the office of the State Engineer of Wyoming, and is identified in the records of that office as Permit No. 3958 Enlargement.

The United States offers its Exhibit 18.

Mr. Burke: United States' Exhibit 19 is a photostatic copy of the document filed in the office of the State Engineer of Wyoming by H. W. Bashore, Superintendent of the North Platte project, Bureau of Reclamation, for the diversion of water from the Laramie River in connection with the operation of the Lingle power plant. The exhibit is identified in the records of the office of the State Engineer of Wyoming as Permit No. 17062.

The United States offers its Exhibit 19.

Mr. Burke: As its Exhibit 20, the United States adopts Wyoming's Exhibit 32, which is a copy—a photostatic copy, I believe—of a document filed by John E. Field in 1904, on behalf of the United States, in connection with the construction of

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Transcript pp. 20057, 20058

20061 Mr. Burke: United States' Exhibit 23 is a photostatic copy of a document filed in the office of the State Engineer of Wyoming by Andrew Weiss, Project Manager, North Platte Project, United States Reclamation Service. The filing was accomplished on the 20th of Aprii, 1923, and is identified in the office records in the office of the State Engineer of the State of Wyoming as Permit No. 3905 Reservoir. The exhibit relates to the construction of the Guernsey Reservoir.

United States offers its Exhibit 23.

Mr. Warren: If I may be permitted a suggestion as to this Exhibit 23 and other similar exhibits, there are a number of them that show that they have something pasted on them. For example, Exhibit 23 has a typewritten slip pasted on it, whereas the application itself is in the handwriting of some person, and this evidently is something put on afterward, with no explanation of how or when or why it got there. The same objection applies to Exhibits 15 and 16, on which there are typewritten sheets apparently attached to them, without any explanation of where they fit in. One might possibly guess as to Exhibit 16 that there were typewritten documents rolled up and pasted, or probably pasted or attached to the instrument, and I suppose by a wild stretch of the imagination one might assume that these descriptions given on these sheets are the descriptions on the sheets, but I think we ought to know that.

Mr. Burke: Mr. Warren, I would suggest that you turn to the certificate which appears in connection with Exhibit 23, and I think you will have your ques-
20062 tion answered. Fulton D. Bellamy, Deputy State Engineer, certifies that this exhibit "is a full, true and complete copy of Permit No. 3905 Reservoir, so full and complete as the original thereof appears on file and of record in my office." These typewritten data and the alleged pastings about which you are complaining appear on the original, and Mr. Bellamy has certified to it.

Transcript pp. 20161, 20062

Mr. Warren: Do not understand this, please, as a complaint, but in the interest of orderly procedure we ought to be able to tell what is on these documents. This slip that is pasted, apparently, according to the photograph, on Exhibit 23 covers evidently an essential part of the document, where you find words at the end of the slip, and I think that would come within the rule of the alteration of a document, which ought to be explained before it is introduced in court.

Mr. Burke: United States' Exhibit 24 is a photostatic copy of the records in the office of the State Engineer of Wyoming in connection with a secondary application for the use of water stored in Pathfinder and Guernsey reservoirs on the lands included within the Interstate Division of the North Platte project. The application was filed by T. W. Parry, Manager of the Pathfinder Irrigation District. The exhibit is identified in the office of the State Engineer of Wyoming as Permit No. 4968 Enlargement. The instrument is filed with the State Engineer on September 19th, 1934.

20063 Mr. Wehrli: Mr. Burke, I notice that on the face of that exhibit there appears this statement—"The total area now irrigated from said ditch is 132,955.4 acres, being lands described in Permits Nos. 3409 and 1398 Enlargement." You do not offer the exhibit for the purpose of showing the amount of irrigated lands, do you, Mr. Burke? That is under the statement 6(c).

Mr. Burke: In answer to Mr. Wehrli's question, I will state that we are not offering Exhibit 24 for the purpose of showing the acreage irrigated.

Mr. Good: Can an explanation be made of the different figures shown by Paragraph 6(c) to which Mr. Wehrli has called your attention, and the acreage shown on the second sheet, which apparently is the consent to enlarge, as signed by Mr. Gleason? The reference is to the 132,955.4 acres.

Transcript pp. 20062, 20063

Mr. Burke: The explanation is this—the figures shown in 6(c) include acreages which were in the Lingle Water Users' Association and the Hill Irrigation District, which gets its water from the Interstate Canal. The figures shown in the statement signed by Mr. Gleason is the acreage which can be irrigated from the Interstate Canal and included in the Pathfinder Irrigation District.

Mr. Wehrli: The figure in 6(c), as a matter of fact, Mr. Burke, is a total of the irrigable acreage of the Whalen Falls rights and the Pathfinder Irrigation District?

20064 Mr. Burke: That is true. The United States offers Exhibit 24.

Mr. Burke: United States' Exhibit 25 is a photostatic copy of a document on file with the State Engineer of Wyoming. It was filed on September 19th, 1934, and is a secondary application for the use of water stored in the Guernsey Reservoir on the lands included in the North Port Irrigation District of the North Platte project. The exhibit is identified in the records of the State Engineer of Wyoming as Permit No. 4969 Enlargement. The document was filed by P. G. Gebauer. While the exhibit does not show, Mr. Gebauer was at that time the President of the Board of Directors of the North Port Irrigation District.

The United States offers Exhibit 25.

Mr. Wehrli: May we assume, Mr. Burke, that you are not offering that for the purpose of showing the lands actually irrigated?

Mr. Burke: That is true. After these various State filings have been offered, we will then state our purpose.

20065 Mr. Burke: United States' Exhibit 26 is a photostatic copy of a document on file in the office of the State Engineer of Wyoming, which was filed on April 12th, 1935. The filing is made by C. F. Gleason,

Superintendent of Power, Bureau of Reclamation. It is a secondary permit for the use of water stored in the Guernsey Reservoir on the lands included in the Goshen Irrigation District of Wyoming and the Gering and Fort Laramie Irrigation District of Nebraska, both of which districts are served by the Fort Laramie Canal of the North Platte project. The document is identified in the office of the State Engineer of Wyoming as Permit No. 5014 Enlargement.

United States offers Exhibit 26.

Mr. Burke: United States' Exhibit 27 is an application for permit to divert water from the North Platte River, by A. D. Kelley. The application was filed July 25th, 1902. It is identified in the records of the State Engineer of Wyoming as Permit No. 5248. The United States does not offer this exhibit at this time except for the purpose of identification. Testimony will be given in reference to it later.

Mr. Good: May I ask, is this a present existing right, or is it claimed to be?

Mr. Burke: I don't think I am prepared to answer that question. We are merely offering it for the purpose of identification now and there will be testimony about it later.

20066 Mr. Burke: As its Exhibit 28, the United States adopts Wyoming's Exhibit 35, which is a photostatic copy of Wyoming Permit No. 18681, for the construction of the Seminoe power plant.

United States offers its Exhibit 28 as identified in this record.

Mr. Burke: As its Exhibit 29, the United States adopts Wyoming's Exhibit 33, which is a photostatic copy of Wyoming Permit No. 4552 Reservoir, and covers the construction of the Seminoe Reservoir.

The United States offers its Exhibit 29 as identified in this record.

Transcript pp. 20065, 20066

Mr. Burke: As its Exhibit 30, the United States adopts Wyoming's Exhibit 34, which is a photostatic copy of Wyoming Permit No. 4630 Reservoir, and covers the construction of the Alcova Reservoir.

The United States offers its Exhibit 30 as identified in this record.

Mr. Burke: United States' Exhibit 31 is a photostatic copy of a document filed in the office of the State Engineer of Wyoming on November 21st, 1936. The filing was made by H. W. Bashore, Construction Engineer,
20067 United States Bureau of Reclamation, and it covers the diversion and use of water on Morgan Creek, a tributary of the North Platte River, for a domestic and municipal water supply for the Seminoe Dam. It is identified in the records of the State Engineer of Wyoming as Permit No. 18684.

The United States offers its Exhibit 31.

Mr. Burke: United States' Exhibit 32 is a photostatic copy of a document filed in the office of the State Engineer of Wyoming on April 25th, 1936, by H. W. Bashore, Construction Engineer, United States Bureau of Reclamation. It is an application for a secondary permit to use the waters stored in the Seminoe and Alcova Reservoirs on the lands of the Kendrick Federal Reclamation project, previously known as the Casper-Alcova project. In the records of the State Engineer of Wyoming, the document is identified as Permit No. 18682.

United States offers its Exhibit 32.

Mr. Burke: United States' Exhibit 33 is a photostatic copy of a document filed in the office of the State Engineer of Wyoming on April 25th, 1936, by H. W. Bashore, Construction Engineer, United States Bureau of Reclamation. It is an application for secon-
20068 dary permit to use the waters stored in the Seminoe Reservoir on the lands of the Kendrick project. It is identified in the records of the State Engineer of Wyoming as Permit No. 18683.

Transcript pp. 20066-20068

United States offers Exhibit 33.

Mr. Good: May I ask what the difference is, if any, between Exhibits 32 and 33, Mr. Burke? Both of them seem to be Seminoe water for the Kendrick project.

Mr. Burke: I was in error in saying that Exhibit 32 covers the use of the waters of the Seminoe Reservoir. Exhibit 32 covers the use of the waters in storage between contour elevations 5500 and 5487 in the Alcova Reservoir.

Mr. Good: Then, Exhibit 32 relates to the Alcova only, and Exhibit 33 to the Seminoe only?

Mr. Burke: That is correct.

Mr. Good: But, otherwise, they are substantially the same?

Mr. Burke: That is correct.

Mr. Burke: United States' Exhibit 34 is a photostatic copy of an application for permit to divert and appropriate waters from the North Platte River, filed December 1st, 1920, by A. Baker, Commissioner of Public Lands of Wyoming. The application was filed in behalf of the State Board of Land Commissioners of Wyoming. As a part of the exhibit, on Page 21, appears an assignment from the State Board of Land Commissioners of
the State of Wyoming, signed by Leslie A. Mil-
20069 ler, President, and attested by J. H. Fitzpatrick,
Secretary, from the State Board of Land Commissioners of the State of Wyoming to the United States of America.

The United States offers Exhibit 34.

Mr. Good: Page 3 of Exhibit 34 seems to indicate that no action has ever been taken by the State Engineer's office of Wyoming on this application. Will that be explained later?

Mr. Burke: The exhibit speaks for itself, that there was no action taken by the State Engineer of Wyoming,

so far as I am informed, except to grant a petition to change the name of the canal from the Casper Canal to the Alcova-Casper Canal, and, so far as I am informed, that was the only action that was taken by the State Engineer of Wyoming, except to receive the filing.

Mr. Burke: United States' Exhibit 35 is a photostatic copy of a document filed by John E. Field, District Engineer of the United States Geological Survey, on September 19th, 1904, with the State Engineer and Secretary of the State Board of Irrigation, highways and drainage of the State of Nebraska. It is entitled—"Application for a Permit to Construct the Pathfinder Reservoir and to Store the Unappropriated Waters of the North Platte River."

Mr. Good: Does that language occur in the document?

Mr. Burke: What language?

20070 Mr. Good: "Application to Store the Unappropriated Waters of the North Platte River."

Mr. Burke: That is the language that appears on the photostatic copy at the top of Page 2.

Mr. Good: That is the title of the document?

Mr. Burke: Yes, that is what I said, that it was entitled that way.

Mr. Good: Yes, that is right.

Mr. Burke: The United States offers Exhibit 35.

Mr. Burke: The United States Exhibit 36 is entitled—"Petition for a Permit to Relocate Irrigation Works," which was filed with the Nebraska State Board of Irrigation, by Andrew Weiss, and approved by Donald D. Price, State Engineer and Secretary of the State Board of Irrigation, on March 31st, 1915. It covers the relocation of the Fort Laramie Canal.

The United States offers Exhibit 36.

I don't believe I stated that United States' Exhibits

35 and 36 are identified in the Department of Public Works of the State of Nebraska as Application No. 768.

* * * * *

20103 Mr. Burke: United States' Exhibit 44 is a photostatic copy of the first form of water-right application approved by the Secretary of the Interior for entrymen on homesteads under the Reclamation Act. The matter which appears on the exhibit in typewriting or pen and ink may be disregarded as no part of the exhibit. The purpose of the exhibit is merely to show the form of application as approved by the Secretary of the Interior.

We offer Exhibit 44.

20104 Mr. Burke: United States Exhibit 45 is the revised form of water-right application approved by the Secretary of the Interior on November 7th, 1914. Like Exhibit 44, it covers the application for water-right by an entryman on a homestead under the Reclamation Act.

Mr. Wehrli: May I ask a question about this? Are they applications that are made on all lands within the project, or just public lands?

Mr. Burke: This particular series just relates to public lands. We have the others for private lands.

Exhibit 44 is identified in the records of the Department of the Interior, Bureau of Reclamation, as Form A, No. 4-021, and Exhibit 45 is identified in those records as Form A, No. 7-272.

I offer Exhibit 45.

Mr. Burke: United States' Exhibit 46 is the revised form of water-right application to be filed by entrymen on public lands under the Reclamation Act. The revision was made on July 27th, 1922. The exhibit is identified in the records of the Department of the Interior and the United States Reclamation Service, now the Bureau of Reclamation, as Form A, No. 7-272.

Transcript pp. 20103, 20104

The United States offers Exhibit 46.

Mr. Howell: Referring to Exhibits 45 and 46, you will note by the heading there it says, "Water-Right Application. Homesteads under the Reclamation Act" in Exhibit 45, and in Exhibit 46 it says, "Appli-
20105 cation for Permanent Water Right." Are you able to say whether Exhibit 45 covers the same sort of water-right as that indicated by Exhibit 46?

Mr. Burke: Yes, it does. That is for a permanent water-right. Why the change was made, I don't know. I suppose somebody thought it was a good idea.

Mr. Burke: United States' Exhibit 47 is a water-right application, or is a photostatic copy of the form of water-right application originally approved by the Secretary of the Interior to be filed by the owners of lands in private ownership. This exhibit is identified in the records of the Department of the Interior and the Bureau of Reclamation as Form B, No. 4-020. This form is out of print, and we had to photostat an application that was made by one of the land owners, and the typed material may be disregarded. The purpose of the exhibit is to show the form of application.

The United States offers its Exhibit 47.

Mr. Burke: United States' Exhibit 48 is a revision of Exhibit 47. It was revised on November 7th, 1914. It covers the application for water-right by a land owner having lands in private ownership. It is identified in the records of the Interior Department and the Bureau of Reclamation as Form B, No. 7-273.

20106 The United States offers its Exhibit 48.

Mr. Burke: Exhibit 49 is a further revision of Exhibit 47. The revision was made July 27th, 1922. It covers the application for water-right by a person having lands in private ownership, and it is identified in the records of the Interior Department and the Bureau of Reclamation as Form B, No. 7-273.

Transcript pp. 20105, 20106

The United States offers Exhibit 49.

* * * * *

20128 Mr. Burke: The United States' Exhibit 72 is a statement showing the balances of construction charges repayable on September 30th, 1939, from the irrigation districts, Warren Act contractors, and certain individuals in Nebraska and Wyoming served with water from the project works. The exhibit is in two pages. With reference to the individual accounts for Nebraska lands, it is stated that the parties named desire to continue on the basis of their obligation to the United States under their water-right applications and not to have their lands included in the Pathfinder Irrigation District, and to take the benefits of relief legislation enacted by the Congress in 1924 and 1926.

20129 With reference to the several individuals owning lands in Wyoming, and from whom there is due a balance for constructing charges, it is stated that those lands, being situate in the State of Wyoming, could not be included in the Pathfinder Irrigation District, and it was thought that the area was too small to justify the organization of an irrigation district in Wyoming, and, therefore, these lands are served by the works of the Interstate division of the North Platte project and the land owners continue on the basis of individual contracts between them and the United States.

Mr. Wehrli: Are these past-due or delinquent items or simply the balance that are repayable although not yet due?

Mr. Burke: That is correct. That is the balance repayable. It is not intended to show whether they are delinquent or past-due. That is the balance that is repayable on those contracts on behalf of those lands.

Mr. Good: With reference to the provisions of this Exhibit 72, do I understand that the initials "FU" refer to farm unit?

Mr. Burke: That is correct.

Mr. Good: And the first item, "FU 'A'," Section 30-

Transcript pp. 20128, 20129

23-55, is the farm unit that is designated in the setup of the north side development there, and this particular person is the person in whose name the obligation runs?

Mr. Burke: The "A" does not mean that. The "A" is the initial that identifies that particular farm unit.

20130 Mr. Good: Yes, but I mean that particular farm unit is some particular subdivision of Section 30-23-55?

Mr. Burke: That is true.

Mr. Good: And from the records of the Bureau of Reclamation it can be discovered what the subdivision of the section is?

Mr. Burke: Yes.

Mr. Good: Are those names of the individual accounts the names of the present owners or the names of the persons in whose names the contract was originally made?

Mr. Burke: It is my understanding that they are the names of the present owners. However, there might be some case where transfers have taken place and the Bureau has not been advised of it or the recordation has not been made of it, so our information might not be up to date in that respect.

Mr. Good: Can you state the relationship of the amount of these individual accounts to United States' Exhibit 57, the statement of the costs in all divisions? Do they come under the Interstate division?

Mr. Burke: Yes, they would come under the Interstate division.

Mr. Good: All of these individual accounts?

Mr. Burke: Yes.

Mr. Good: And with reference to the Warren Act contracts, where no amount is shown as still unpaid, or if the name of the district does not occur and no amount is given, that means that they have paid in full? For

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instance, take the Gering Irrigation District is not named here at all.

20131 Mr. Burke: That is correct. If the name of the Warren Act contractors does not appear here, our record shows that that obligation has been paid in full.

Mr. Good: May I ask why the Farmers Irrigation District is included in a separate group, separate from the Warren Act contractors?

Mr. Burke: That is an error. That should be down under the Warren Act contracts.

Mr. Howell: On the face of Exhibit 72, or elsewhere on the exhibit, so far as I am able to find, there is no statement as to where this account is made up and by whom. Is there any reason why that is not designated and noted?

Mr. Burke: No. I have stated that these data for this exhibit were taken from the records of the Accounting Section of the United States Bureau of Reclamation and the exhibit was compiled in Washington.

We offer Exhibit 72.

* * * * *

20157 Q. While you were on the North Platte project, did your duties include the keeping of withdrawal and restoration orders and platting the land descriptions on plats?

A. It did for the period 1926 to 1935.

Q. Were the orders prior to 1926 platted on the township plats in the Guernsey office at the time you took charge of the work?

A. They were.

Q. And your duties, then, from 1926 to 1935 were the recording of the later information?

A. Yes, just merely extending the record already started.

Q. Will you refer to Government's Exhibit 8? In the

front part of the book is a large map. Will you explain that map?

A. The title on the map is—"Existing Withdrawals under Section 3 of the Act of June 17, 1902 (32 Stat. 388) in North Platte Valley, as of December 31, 1939." The lands covered by the Reclamation withdrawals are shown in a little square colored blue, that is, in the legend.

20158

Q. All of the lands shown on the map in Wyoming and Nebraska which are colored blue are under existing withdrawals?

A. That is correct.

Q. Can you state whether or not there are any lands described in Government's Exhibits 7-a and 7-b, as originally withdrawn or restored, which are not shown on this map?

A. If the lands had been withdrawn and later restored and left restored, they are no longer shown on this map.

Q. Can you indicate on the map any areas in which withdrawals were originally made but where restorations have been made?

A. The area east of Bridgeport was withdrawn at one time along the river, and also some south of the Seminoe Reservoir, in the vicinity of Saratoga and Encampment. Those are not shown on this map now.

Q. Now, referring to the remaining pages of Exhibit 8, will you explain how the book is compiled, how that exhibit is compiled?

A. The book has two main subdivisions, in which the Nebraska records are kept in the front half of the book and the Wyoming records are kept in the back part of it. The lands within the states are further subdivided into ranges. For instance, the first page is Township 14, Range 30 West, and the next page is Township 15, Range 30 West. All of the townships in Range 30 are shown before any townships in the next range follow, and after Range 30 is completed, then they have Ranges 31 and 32, and so on, in that order, to the State line. The division point between the State line is the line—that is, the last range in Nebraska is Range 58

20159

and the first range in Wyoming is Range 60. There is no Range 59.

Q. Now, referring to the lands or to the page shown as Township 14 North, Range 30 West, do you have that? That is the first township plat in the book.

A. Yes, I have that.

Q. In the lower left-hand corner is a legend in blue marked—"A—first form." Will you explain that?

A. The lands withdrawn under the first form were withdrawn for reservoir construction and maintenance of irrigation works, and also include deposits of gravel, rocks, and things of that nature.

Q. What is the relationship between the "A" and the "first form"? I mean the portion in blue, the "A—first form"?

A. Anything colored in the book as being in "A" is always colored blue.

Q. What are the second form?

A. Second form withdrawals are your lands, that are supposed to be susceptible of irrigation.

Q. And the green line marked "B," will you explain that?

A. That green—all second form lands are col-
20160 ored in green, and the boundaries of them are cross-hatched.

Q. And all lands in green with the "B" mean that they are withdrawn under the second form?

A. That is correct.

Q. Will you explain the legend with reference to the restorations?

A. That is red.

Q. What is that—is that orange?

A. That is red. All of the restorations in the book are colored red and are marked with the letter "R."

Mr. Howell: Will you explain at the beginning what you mean by "restoration" and by "withdrawn"?

Mr. Burke: I explained that yesterday, Mr. Howell. Under Section 3 of the Reclamation Act, Congress directed the Secretary to withdraw from entry all public

lands in an area of a project except under the homestead laws and the Reclamation Act. The lands are withdrawn in two forms, the first form withdrawals being those which the Secretary determined will be necessary for the construction and operation and maintenance of the irrigation works, such as reservoirs, canals or material deposits, such as land having gravel, and things of that kind, and the second form lands are lands which the Secretary determines are susceptible of irrigation from the proposed works. As a general rule, these withdrawals are made of large bodies of land at the outset of the construction program. As the program develops,
20161 it becomes obvious that some of the lands cannot be benefited by the Reclamation program, so, upon the recommendation of the project officials to the Commissioner of the Bureau of Reclamation and approved by him to the Secretary of the Interior, the lands which should not be held under withdrawal are restored, and then the proper notations are made on the tract books of the General Land Office.

Mr. Wehrli: May I ask a question at this point? On this map as shown in the exhibit, the lands that are marked in blue, that does not mean, does it, that all of the lands that are marked in blue were withdrawn as public lands at the time of the inception of the project, but some of them were in private ownership at that time?

Mr. Burke: We will ask Mr. Keimig.

The Witness: The withdrawal orders did not affect the lands in private ownership. No investigation was made in the original withdrawals as to the private lands, but they withdrew the entire township, but the withdrawal did not apply to lands in private ownership, and, although on this map there might be the entire township colored blue, there might be individual tracts which were patented lands and were not subject to withdrawal.

Mr. Wehrli: Directing your attention to the Kendrick project, isn't all of the land of the Kendrick project colored blue on the map?

20162 The Witness: No, there are a few gaps in it.

Mr. Wehrli: Is it your understanding as to this map that all of the lands which are colored blue were public lands at the time of the withdrawal with reference to the Kendrick project?

The Witness: No. I would be glad to turn to that township and range and show you.

Mr. Burke: I think, to explain that, Mr. Wehrli, the blue marks the exterior boundaries of the withdrawals, and there might be included in the lands which are colored in blue some private lands. The withdrawal orders, that is, the earlier ones, withdrew the township irrespective of ownership, but the withdrawal was not effective as to the private lands.

Mr. Wehrli: From his testimony, I understood him to say that all of the lands colored in blue were withdrawn public lands.

Mr. Burke: I think I explained that in answering your last question.

The Master: Can you give us any idea of the proportion of the area marked in blue as being withdrawn, as to how much is privately owned land and how much is public land?

The Witness: No, this record will not show that.

Mr. Burke: That may be determined, may it not, by reference to Exhibits 7-a and 7-b, the public orders?

The Witness: No. In connection with the earlier withdrawals, for instance, in eastern Nebraska or central Nebraska, they withdrew a half a township at a time, and the only way that could be ascertained would be by comparing the withdrawal orders with the Land Office records.

20163 The Master: Is there a very considerable portion of the lands private lands enclosed in the blue areas, or is the private lands a minor portion of the total?

The Witness: I am not so familiar with the lands around the Casper project, but the large share of the land around Mitchell and around Torrington were in public ownership and were public lands, and the majority of the lands around the Pathfinder Reservoir and the Seminoe Reservoir were also public lands.

Mr. Wehrli: I might state that my recollection is that in the Kendrick project, at the time of the commencement of construction about 1934, that of the irrigable lands in the project, my recollection is that about fifteen per cent were at that time remaining in public ownership and the rest were in private ownership.

* * * * *

Direct-examination Resumed by Mr. Burke:

20433 Q. Mr. Weiss, yesterday afternoon, in answer to a question as to what you thought was an estimate of the irrigable area under the Interstate Canal in Wyoming and Nebraska, you stated that it was about one hundred and five thousand acres. This morning, do you wish to correct that figure?

A. Yes, I wish to correct that. I believe it is listed as one hundred and fourteen thousand.

Q. You were familiar with the lands in that irrigable area?

A. Yes.

Q. Generally familiar with them?

A. Yes.

Q. As to whether or not they were in private ownership or public land?

A. Generally familiar with them, yes.

Q. What is your estimate of the acreage of public lands in that irrigable area?

A. About two-thirds, I think, was still public land.

Q. That is, about eighty thousand acres were public land?

A. That is in round figures, yes.

Weiss—direct *Transcript pp. 20163, 20433*

Mr. Howell: Mr. Burke, are you talking about the Interstate?

Mr. Burke: Yes.

20434 Mr. Howell: Giving the acreage under the Interstate Canal?

Mr. Burke: Yes.

Mr. Warren: Will you fix the date?

The Witness: That was about 1903 or 1904.

Direct-examination Resumed by Mr. Burke.

Q. So there would be about eighty thousand acres, in round numbers, of public land, and about thirty-four thousand acres of private land?

A. Yes.

Q. That private land was not reclaimed?

A. No.

Q. Can you give us an estimate of the irrigable area under the Fort Laramie unit in Wyoming and Nebraska?

A. I believe it was about in the same proportion of public and private—that is, about two-thirds public land.

Q. And there were about one hundred and seven thousand acres in the irrigable area in the Fort Laramie?

A. Yes, sir.

Q. So there would be about sixty thousand acres of public land and about forty-seven thousand acres of private lands?

A. It would be slightly more than sixty thousand, I would say.

Q. But that would be about right in round numbers?

A. Yes.

Q. The Northport unit, the irrigable area under that unit, you would say that was about fifteen thousand acres?

A. Yes, I think it was close to that, or a little
20435 more than that. I think we had about sixteen thousand acres classed as irrigable under the Northport.

Q. What would be your estimate of the proportion of public and private lands in the Northport unit?

A. About half and half, I would say.

Q. About eight thousand acres of public lands and about eight thousand of private lands?

A. That is all in round numbers, of course.

Mr. Howell: Do you care to bring out the year?

The Witness: About 1904.

Q. All public lands which were in the irrigable areas of the three units of the project were withdrawn from entry except under the Homestead Act and the Reclamation Act by the orders of the Secretary of the Interior which appear in United States' Exhibits 7-a and 7-b, is that correct?

A. Yes, those are the withdrawal orders.

• • • • • •

20456 Q. Had you had an opportunity to observe the development that was taking place under the canals and early priorities, particularly the Tri-State Land Company and the canals who were petitioning for Warren Act water?

A. You mean, up to—

Q. Up to 1911.

A. Up to 1911, those were the earliest features of the development in 1911.

Q. Was the water supply at that time adequate for the full development of their lands under the sugar beet type of agriculture?

A. Not without storage.

Q. In other words, it was necessary for them to supplement their direct-flow rights with storage in order to go ahead with that sort of development?

A. Absolutely.

Q. About what time of the year would the river usually fail to supply their early rights?

A. About somewhere between July 1st and July 15th.

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Weiss—direct *Transcript pp. 20435, 20456*

Recross-examination Resumed by Mr. Wehrli.

21252 Q. Mr. Weiss, I have just one further question. Of course, all of these Warren Act contracts were made because these canals knew that they did not have a sufficient supply of natural flow water?

A. That was definitely known.

Mr. Wehrli: That is all.

* * * * * *

22111 Q. Mr. Patterson, as to Colorado Exhibit 39, is this a compilation made by you of the results of the investigations of your engineers, and also the factual data found in the aerial surveys in the whole three-year study of the lands in Jackson County?

A. Yes, it is.

Q. Now, is there any comparison that you have been able to make from other sources as to your findings of 131,810 acres of irrigated land in Jackson County, and of 30,390 acres of irrigable lands?

A. Yes, there are a number of other sources of information which relate to that same subject, as for example the reports of the U. S. Census, the reports of the Army Engineers, and various county, state, and federal agencies. They do not cover the exact number of years, but do give another source of information as to the approximate extent of irrigated lands and irrigable lands in Jackson County.

Q. What did you find from the Census report?

A. The last available report of the United States Census, being the 1930 census, refers to the preceding season of 1929, and at page 109 of the census report on irrigation of agricultural lands, under the column designated "Jackson County," the report shows 113,840 acres irrigated in the season of 1929, and 136,942 acres irrigated in the season of 1919.

Q. Have you made any further study of the history of irrigation in Jackson County?

22112 A. We have made a study of the irrigated acreages at various periods prior to our Jackson County investigations, and those have included studies of

the court records as to the dates when irrigation projects were initiated and constructed, and from that sort of a study we have concluded as to the peroids of 1919 and 1929.

Mr. Good (Interposing): Just a minute—well, I will let the objection go in afterwards.

A. (Continuing) —that there has been no substantial change in the extent of the irrigated lands during the last twenty-year period.

For the purposes of our analyses of water supply, we have assumed and used a figure of 129,000 acres in 1919, and a figure of 130,400 in 1929. These differ slightly from the United States Census reports.

Mr. Good: What were those figures for the year 1919?

Mr. Warren: Were you asking me?

Mr. Good: Yes.

Mr. Warren: We might have the reporter read them.

(Last answer read.)

Q. Go ahead, Mr. Patterson.

A. The amount, the difference being that our figure used by us for water supply studies is 7942 acres less in 1919 than was reported by the Census; and in 1929, our figure is 16,640 acres more.

22113 I believe I have given what the Census figures show for Jackson County, but I will repeat them. They show 136,942 acres in 1919, and 113,840 acres in 1929.

Q. Did you come to the conclusion from those studies as to what the acreage under irrigation was in the year 1909?

A. Yes. Our studies indicate that in 1909 the irrigated acreage was 111,000 acres. The United States Census for 1910 shows that the irrigated area in the season of 1909 was 151,850 acres, or 40,850 acres more than as now estimated by us.

Q. Can you explain that difference?

A. I do not know that I have any conclusive explanation for it, but it is possible that some of the 31,390 acres classified by us as irrigable are actually irrigated or are classified as irrigated by the United States Census in this report of 1910 covering the season of 1909. In that event, our figure of 162,730, representing the combined irrigable and irrigated acreages in Jackson County would be quite comparable.

Q. Is there any comment concerning the United States Census of 1930?

A. In addition to reporting the irrigated acreage, the United States Census gives information as to the area which the constructed enterprises were capable of supplying with water, and also as to what they call the irrigable area in enterprises. The United States Census reports of 1930, for the season of 1929, state that the area enterprises were capable of supplying with
22114 water was 140,475 acres, and that the irrigable area in enterprises was 162,730 acres.

Q. That figure, "Irrigable Area in Enterprises" of 162,730 acres, evidently includes what you have classified or to which you have applied the terms "Irrigated" and "Irrigable."

A. That would be my general interpretation of it, yes, although they have that other classification of "Area Enterprises were capable of supplying with water," and in addition to the one, "Irrigable area in Enterprises." I am not entirely clear as to their distinction between those two classifications.

Q. What was the previous comment in census reports as to the area that enterprises were capable of supplying with water?

A. Consulting the 1920 U. S. Census report covering the season of 1919, and with respect to Jackson County, the report shows that the area enterprises were capable of supplying with water was 149,325 acres. It also shows that the total area in enterprises was 229,023 acres. I might state that this item, namely, "Total Area in Enterprises" was reported in the 1920 census, but after-

wards was discontinued and was not reported in the 1930 census.

Q. Have you any further comment as to the comparison of your figures with the Census figures?

A. I think, in general, our findings as to the irrigated and irrigable areas in Jackson County are not inconsistent with the acreages reported by the Census
22115 Bureau office for previous years.

Q. Will you mention any further data that is published in official records where the irrigated acreage in North Park is mentioned?

A. What is commonly referred to as the Report of the Army Engineers, being House Document 197 of the Seventy-Third Congress, Second Session, a report from the Secretary of War on the Platte River in Colorado, Wyoming and Nebraska, at Page 46 thereof, shows that the irrigated acreage in the North Park areas was 140,400 acres, and the total irrigated acreage in Jackson County was 143,400 acres.

Q. Is this document what is known as the Army Engineer's Report?

A. Yes.

Q. When was that report printed?

A. That report was printed in 1934. It was referred to the Committee on Rivers and Harbors, and ordered to be printed with 22 illustrations on January 3, 1934. The field investigations summarized in that report were conducted during a few previous years.

Mr. Wehrli: Mr. Warren, you will pardon the interruption. I do not see the last figure given in the report, I believe, 143,000.

The Witness: If you will note in that report that there is an item of 3000 acres of land irrigated with water taken from Big Creek, and adding that to the 140,400 acres listed there, that will make a total of 143,400.

Mr. Good: That is in paragraph No. 99, page 47.

22116 Mr. Wehrli: I see. I was looking on page 46 for it. Thank you.

Q. Mr. Patterson, will you read paragraph 9 on page 47 of that report?

Mr. Good: Ninety-nine.

Mr. Warren: I beg pardon?

Mr. Good: Ninety-nine.

Q. Paragraph 99 on page 47.

A. The paragraph is entitled "History and Types of Irrigation Developments," and it reads as follows: "Irrigation was first introduced in this area by the early stockmen in 1880. During the first decade, 1880 to 1890, the number of ditches increased rapidly, with some increase in the size of canals. Since 1890, the increase has been gradual, until the present irrigated area amounts to 140,400 acres, as shown in the above table. In addition to this area 3000 acres on Lake Creek are irrigated with water diverted in Section 2 (Section 2 being Colorado Line—Pathfinder Reservoir) and carried across a divide from Big Creek."

Q. How does that figure of 143,400 acres of irrigated land, found by the Army Engineers, compare with your determination?

A. It is approximately 10 per cent more.

Q. Are there State Engineer biennial reports that give any information concerning irrigated areas in Water District No. 47 for Jackson County, Colorado?

A. No. The State Engineer's biennial reports fail to include information as to irrigated areas in
22117 Water District 47, which is Jackson County. Commonly there is a blank space in the line or column relating to Water District 47. In some instances the words "No report" appear in such line or column.

Q. Did you consult the field notes filed by the Water Commissioner in the office of the State Engineer?

A. Yes, we consulted those field notebooks. They are available as to some of the years, but are missing as to many of them. The acreage information appears to have been supplied by some of the ditches, but not all of them in Jackson County. For example, the acreage data ap-

pears in connection with about 100 ditches in the 1939 field book, and for about 27 ditches in the 1924 field book. Such fragmentary information is of little value in checking the results of our investigation, or the estimates made by us.

Q. What check did you make with County Assessors' records, if any?

A. We found some information among the records of the County Assessor of Jackson County, which show for 1939 a total of 69,546 acres of meadowland, that is, land from which the hay crop was harvested by mowing; and 56,800 acres of grazing land, from which the crop was harvested by pasture, or a total assessed by the County Assessor in those two classifications of 126,346 acres.

Q. How did that compare with the 1938 records, if you made a comparison?

A. The same source of information for the year 1938 reported 126,361 acres.

Q. How does that compare with your deter-
22118 mination of 131,810?

A. The County Assessor reports about 96 per cent as much land as our investigations disclosed, or about four per cent less than the total that we found.

Q. Have you had occasion in other counties in Colorado to consult the Assessors' records in an investigation as to how the lands were carried upon the Assessors' rolls?

A. Yes, we have. We have tabulated all of these various sources of information for all of the counties in Colorado.

Usually the acreage reported for assessment purposes, that is for the lands that carry the higher valuations, such as irrigated land here, is substantially less than is found by actual survey. Frequently the ratio is about two-thirds or three-fourths of such actual acreage. I believe it is more or less exactly two-thirds for the state as a whole, the acreage returned for assessment purposes being, in round numbers, 2,200,000 acres for Colorado; and most of the authorities report an actual irrigated acreage more nearly approximating 3,300,000 acres.

Q. Are there any agricultural statistics as to this territory?

A. Yes, there are.

Q. That you have consulted?

A. Yes.

Q. Will you state what?

A. There are state and federal crop reporting services which give acreages of agricultural lands.

22119 In connection with the lands of Jackson County, it should be recalled that these statistics as to crop yields and crop production cover only the irrigated meadowlands from which the crops are harvested, commonly termed natural hay lands, and do not include the pasture lands such as are under and irrigated by some of these ditches.

Q. Would you give us the figures that you have collected in that manner?

A. Referring to the Colorado Cooperative Crop and Livestock Reporting Service, that being a cooperative agency in which the Colorado interest is represented by the State Planning Commission, and the federal interest by the U. S. Department of Agriculture, Division of Agricultural Statistics, we find that the reports covering acreage of harvested crops during the past ten years range from a minimum of 82,640 acres, as in 1936, to a maximum of 94,686 acres, as in 1932. The ten-year average acreage from which the crops were harvested during the period 1929 to 1938, inclusive, was 88,182 acres.

It is interesting to note as to this acreage that 85,792 acres during that ten-year period were devoted to a production of wild hay, and 2191 acres to the production of tame hay. The remaining agricultural acreage, namely, 200 acres, was devoted to a group of miscellaneous crops of which potatoes represent 41 acres, and the
22120 several small grains aggregated 159 acres. This would suggest that approximately two-thirds of the lands that we have classified as irrigated are included in the harvested acreage group, and about one-third of the total in the non-harvested or pastured area.

I might state in that connection that we have made no distinction in our studies of water supply and water consumption between the harvested acreage and the pastured acreage because it appears to take just as much water to produce the crops whether it be good, and mowed, or stacked, and whether it be harvested by grazing of livestock.

Mr. Warren: May we have identified and so marked Colorado Exhibit No. 40?

(Thereupon an item was marked for identification Colorado Exhibit No. 40.)

Q. Mr. Patterson, will you examine the item identified as Colorado Exhibit No. 40, and state what it is?

A. Colorado Exhibit No. 40 is a combined tabulation and diagram summarizing the available data as to irrigated areas in Jackson County. It indicates the relations between the figures as reported by various agencies and the values as determined by our Jackson County investigations for recent years, and as estimated by us for earlier periods.

Q. What does the curve indicate?

A. The curve indicates the irrigated acreages for each of the years from 1880 to 1939, starting
22121 from a known point in 1880, when irrigation first began in Jackson County, and terminating at a known point in 1939, when the irrigated acreage was determined by us according to the methods of aerial survey and field investigations previously explained.

Between these two points the curve passes above some and below other points, as reported by the various agencies indicated in the legend. Generally, the curve conforms to the records of irrigation development as evidenced by the water right adjudications made by the Colorado District Court.

Q. By whom are these estimations made?

A. This Colorado Exhibit 40, and the information appearing on it, was prepared in the office of the Engineer-

ing Department of the Colorado Water Conservation Board under my direction and supervision.

Q. You have already explained how the top figure, the figure for 1939, was obtained?

A. Yes.

Q. As to the intermediate figures, between the years 1880 and 1939, the curve appears to follow pretty closely the location of the points designated by circles drawn around them.

A. Yes, those are the acreages as calculated from a study of the court records showing the dates of construction of ditches and use of water for irrigation purposes.

22122 We made a study of the amounts of the final decrees in each of those various decades, and then using the percentages of the total, which we found prevailed in 1939, we assumed that the same percentages prevailed in earlier periods, and thus determined the points that are indicated by the small circles.

As appearing in the legend, the X's are the reports of the U. S. Census Bureau to which I have previously testified. The point surrounded by a small square is the information as reported by the U. S. Army Engineers. I have put on here one or two other items, a small triangle, indicating the estimate according to the Conkling-Meeker report, as of 1913.

The small diamond-shaped point in the year 1939 is the irrigated area as reported by the County Assessor of Jackson County for assessment purposes.

Now, it will be noted that in 1929 there are two X's one below and one above the line; that the upper one is covered by brackets, and that indicates the reported irrigable acreage as reported by the United States Census, the X indicating that the report was by the United States Census.

Now, the figure 6-pointed star in a bracket beside the year 1939 is our determination of the combined irrigable and irrigated area in Jackson County.

Transcript pp. 22121, 22122 *Patterson—direct*

Q. Underneath this scale, opposite each of the vertical columns, we find figures running from 1939 to the right of the page to 1880 at the left. Do those figures represent those respective years?

22123 A. Yes.

Q. And on the left of the sheet is a scale extending from zero to 200,000 and the words, "Irrigated acres." Now, does the position of each of these X's or circles or squares or other figures, as it may be in that vertical scale, represent the numerical value set opposite for the year, as that column shows irrigated acreages (estimated)?

A. No. That column "Irrigated Acreage (Estimated)" refers only to the curve or the line drawn on this diagram. The points to which your comments were directed are located as to the values by the scale at the bottom or to the left of the diagram, accordingly as you are looking at it, marked, "Irrigated Acres." The scale reading 50,000, 100,000, and 150,000, those spots are located not only with respect to that scale but with respect to the yearly scale on the other side.

The figures under the column "Irrigated Acreage (Estimated)" are the figures which we have estimated for purposes of water supply analyses as being the probable extent of irrigated lands in each of the years extending backward from 1939 to earlier dates.

Q. Now, take the year 1909: There are two symbols upon that line, one a cross and the other a circle. I take it that on that vertical circle each of those squares represents 50,000 irrigated acres, the larger squares, is that right?

A. Yes, and each smaller square represents 5000 acres.

Q. So 111,000 designates the position of the

22124 circle of your estimated acreage for that year—1909 is that correct?

A. The position of the curve which, in that instance, happens to run right through the circle, would be 111,000. Now it happens at that point, which was calculated by us from the court records showing dates of construc-

tion and so forth, was also 111,000—so the curve runs right directly through that point. The other point, the X that you referred to in 1909, is something between 155,000 and 160,000. That was the report of the United States Census Bureau as to the number of acres irrigated in Jackson County that season.

Q. Do you happen to know, Mr. Patterson, what was the first year that Jackson County became a separate County?

A. It was separated from Larimer County, as I recall it, in 1909. I believe 1910 is the first figure applying to Jackson County statistics separately.

Q. So that these figures given prior to 1909 were probably given from Larimer County sources, is that correct?

A. Yes. And they involve quite a measure of estimation in segregating that total as between the portion of Larimer County as it then existed, that is now Jackson County, and the remaining portion of the total that is now Larimer County.

Q. So then the position of this curve shows the conclusion of the engineers of the Colorado Water Conservation Board as to irrigated acreage for those years, is that correct?

22125 A. Yes.

Q. The figures opposite those years give those estimations in figures?

A. Yes. The same information in figures that is portrayed by means of the line or curve on the graph.

Q. And the other designated points—there are no figures shown as to their position on the diagram, and do they correctly represent the figures which are intended to be portrayed as to these estimates by other agencies?

A. Yes, they do.

Mr. Warren: We offer in evidence Colorado Exhibit No. 40.

The Master: We will recess now.

(Thereupon a recess was taken from 3:30 to 3:55 p. m.)

Mr. Warren: I do not know whether I have previously offered in evidence Colorado Exhibit No. 39, but I do so at this time to make sure I have not missed it.

* * * * * *

24341 Q. How were your investigations made with respect to the State of Wyoming?

A. Regarding the State of Wyoming, the aerial photographs in our office cover all of the valley lands along the main North Platte River, from the Colorado line to the Nebraska line. They cover all of the tributary areas in southeastern Wyoming, that is to say, all of the Horse Creek drainage, with the exception of a few townships near the middle portion of the Horse Creek drainage area. They cover all of the lands of the Laramie basin, including the major irrigated area of the Wheatland vicinity, up to Wheatland Reservoir No. 2. They cover most of the tributary areas in Natrona and Converse Counties, from approximately Casper to Douglas, and particularly those on the south side of the North Platte River; and they cover tributaries in the upper North Platte basin in Wyoming, that is to say, in the general vicinity of Encampment and Saratoga.

24342

Q. As to this area for which aerial photographs were available, what was the method used in determining irrigated lands?

A. The general method was the same as described in connection with the upper Laramie basin in Colorado, which is to say we took the aerial photographs into the field and inspected all of the areas concerning which there was any question from the pictures as to whether or not the land was irrigated. I might state further that after that, then the method of ascertaining the number of acres on any one aerial photograph, or in any one section appearing in the photograph, is by means of a planimeter, the use of which was described in connection with the Jackson County investigations.

Q. Did your investigators have any other information available as to the irrigation of lands in the State of Wyoming?

A. Yes, they had available and took with them tabulations of the permits issued water rights recognized in the State of Wyoming, being tabulations of in-
24343 formation compiled from the published reports of the State Engineer of Wyoming. I might state also that with some few exceptions, those published State Engineer's reports as to permits issued are substantially in agreement with the exhibits that have been submitted in this record with respect to the recognized permits in Wyoming.

Q. What was done with these tabulations or lists in the field?

A. Well, they were taken along on the cruise, and in connection with each of the aerial photographs a search was made on the ground for each of the ditches listed in the water right tabulations. This procedure, I might state, acts as a check, and aids in avoiding omissions of land which might not show up so clearly in the photographs as being irrigated land.

Q. Were there further checks made in the field as to any other information that might be available?

A. Yes, the men went to the local public offices, such as the county officials and those of school districts, and checked their records for the purpose of making certain that no land appearing on the assessment rolls as irrigated had been overlooked. In that connection I might state we inspected and classified substantial areas of irrigated land not shown in the records of the counties and school districts. At the same time, we have included in our total all of the lands appearing in county and school district lists, together with certain other lands not appearing on those lists.

Q. Now, as to the portions of the North
24344 Platte River basin in Wyoming for which no aerial photographs were available, what methods were used in obtaining information as to those areas?

A. As to the areas for which no aerial photographs were available; our work had to be carried out in a little different fashion, and might be classified as somewhat less accurate and complete, and still we attempted to

make a fairly complete cruise of those areas, and a check of the irrigated land. I would like to explain what those areas are which were not covered by aerial photographs. First from the upper Laramie basin in Wyoming above the Wheatland Reservoir. There is a substantial area of irrigated land on the Little Laramie, and other lands in the vicinity of the City of Laramie, and upstream from there. The second block of country for which we had no pictures was certain areas along the head water tributaries of the Medicine Bow River. And the third area is practically all of the Sweetwater River, except the lower portion in the vicinity of the Pathfinder Reservoir; and then there is finally another area close to the river and near the mouths of tributaries in Converse County in the general vicinity of Douglas. Now, as to those areas, we attempted to cruise them, using the water right list as a guide, and checking our estimates by comparisons with other areas where we had various kinds of information, including aerial photographs, and where we knew our figures were fairly complete and accurate. From those relations, then, we tried to check the figures compiled by the observers in the field, which did
24345 not include any detailed surveying, but were more or less an estimate made by visual inspection. Then, after summing up all that information, we compared it, as I have stated, by checking our known results with their published results, as to county and other subdivision areas.

* * * * *

28072 Q. Now, will you refer to United States Exhibit 207-B and state what that is?

A. That is a tabulation headed "Acreage Irrigated by Federal Projects (primary or full supply) Actually in Operation, 1929 and 1939, in the Seventeen Western States." Incidentally, that should be in the sixteen Western states.

Q. From what source did you take those figures?

A. Those figures were taken from the Census
28073 of 1930 and the preliminary Census tabulation of the 1940 Irrigation Census.

Patterson—direct *Transcript pp. 24344, 24345,*
Lineweaver—direct *Transcript pp. 28072, 28073*

Q. Now, what was the increase in the acreage irrigated by the Bureau of Reclamation projects with a primary water supply in that period?

A. From that tabulation from the Census figures, it shows 338,976 acres.

Q. What was the increase in the Indian project area irrigated?

A. 174,806 acres.

Q. And the total for the both of them would be how much?

A. 513,782 acres.

Q. What per cent of the total increase in the irrigated area in the seventeen states is the increase due to Federal projects?

A. 31.6 per cent.

Q. Were Exhibits 207, 207-A and 207-B prepared under your supervision and direction?

A. They were.

Mr. Collett: The United States offers in evidence Exhibits 207, 207-A and 207-B.

(Whereupon, at the hour of 3:30 o'clock, p. m., a short recess was taken.)

Direct Examination Resumed by Mr. Collett.

28074 Q. Mr. Lineweaver, will you refer now to United States Exhibit 207-C and state what that is, please?

A. That is a tabulation comparing the irrigated area provided with supplemental water under Warren Act or other contracts by the Bureau of Reclamation between 1929 and 1939.

Q. What is its significance?

A. It shows that the area inadequately irrigated by non-Federal enterprises which received supplemental water from Bureau of Reclamation projects increased 271,240 acres from 1929 to 1939.

Q. What states show the largest increases?

A. Utah, Oregon and Nevada, where seven storage projects were built specifically for this purpose.

Q. What of the decrease shown in Texas?

A. In 1929 the Bureau of Reclamation reports included about 45,000 acres in Mexico as receiving supplemental water from the Rio Grande project, which is an interstate project. That area is no longer carried in the Bureau's reports, and consequently is eliminated, which makes a net figure, as stated, of 271,240 acres.

Q. What are the sources of these data?

A. The 1929 total is that reported by the Bureau of Reclamation for 1929 and printed in the Introduction to the 1930 Census of Irrigation. It was not included in any enumeration. The 1939 figures are those reported in the preliminary tabulation of the 1940 Census of Irrigation. As the Bureau did not separate by states the irrigated acreage in interstate projects in 1929, the apportionment in the states of California, Nebraska, Oregon and Wyoming for that year is estimated.

28075

Q. What is the combined increase of acreages receiving primary and supplemental supplies, as shown by Exhibits 207-B and 207-C, and what percentage of the overall increase irrigated acreage is this?

A. The increase is 785,022 acres, or forty-two per cent of the overall increase.

Q. What was the status as to the productiveness of that portion of the irrigated land receiving a supplemental supply before the Federal Works were constructed for their relief?

A. The reports I have read of these supplemental water projects, or several of the supplemental water projects, constructed between 1929 and 1939, indicate that much of this area would have gone out of production if supplemental water had not been provided.

Q. This Exhibit 207-C was prepared under your supervision and direction?

A. It was.

Mr. Collett: The United States now offers United States Exhibit 207-C in evidence.

Q. Now, will you please refer to United States proposed Exhibit 208 and state what it is and from what source it was taken?

Lineweaver—direct *Transcript pp. 28074, 28075*

A. Exhibit 208 is a tabulation of the acreage irrigated in 1939 which was wholly dependent upon non-Federal enterprises and that which was dependent upon
28076 Federal projects for part or full supply in the seventeen Western states. The source of such preliminary tabulation is the 1940 Census of Irrigation.

Q. What are the totals?

A. The totals are, as shown here, of the entire acreage that is wholly dependent upon non-Federal projects, the total is 16,777,833 acres. That is the total irrigated acreage in non-Federal enterprises, with 1,460,470 acres receiving a part supply from Bureau of Reclamation Works.

Q. What is the Federal full supply?

A. The Federal full supply is 2,330,650 acres. The total Federal supply, both part supply and full supply is 3,791,120 acres.

Q. Now, that includes Indian projects?

A. The Indian Office supplies only primary water to these projects at the present time.

Q. So that the grand total of the irrigated acreage as of December 31st, 1939, was 20,568,953 acres?

A. In the seventeen states?

Q. Yes, in the seventeen Western states.

A. In the seventeen Western states, yes, sir.

Q. This Exhibit 208 was prepared under your supervision and direction?

A. It was.

Mr. Collett: We now offer it in evidence.

* * * * *

28177 Q. Mr. Lineweaver, will you refer to the document which has been marked for identification as United States Exhibit 227, and state what that is, please?

A. Exhibit 227 is a tabulation showing the irrigable acreage which non-Federal or private irrigation enterprises and Federal irrigation enterprises will be capable of supplying with water upon completion of the current Federal programs and the acreages that are estimated by the Census Bureau as being contemplated after the com-

pletion of existing projects that were listed in the Census report for 1940.

Q. Now, will you refer to Exhibit 228 and state what that is?

A. Exhibit 228 is a summary of miscellaneous irrigation data with reference to Indian irrigation projects under the current

Q. Now, then, refer to Exhibit 229 and state
28178 what that is, please.

A. Exhibit 229 is a map which reflects the total acreage figures on Exhibit 227 by states. It is a map of the seventeen Western States upon which is superimposed the figures by states which appear on Exhibit 227.

Q. And from what source were the data obtained that appear on the three exhibits, Exhibits 227, 228 and 229?

A. The basic data on Exhibit 227 as to non-Federal projects was obtained from the preliminary tabulation of the 1940 irrigation census. The information as to Federal projects was obtained from the official records of the Bureau of Reclamation and the Office of Indian Affairs.

Q. Now, referring to Exhibit 229, just explain the legend that appears in the upper right-hand corner, please.

A. This is the same as on Exhibit 227, which is the irrigable acreage net that will be dependent upon private or non-Federal enterprises if and when the additional acreage set forth on the preliminary census tabulation for 1940 is brought in, or brought under irrigation, and the acreage which the projects of the Bureau of Reclamation and the Office of Indian Affairs will be prepared to be capable of supplying with water upon completion of the current Federal programs.

Q. What do you mean by "the current Federal programs"?

A. The current Federal program involves the projects in operation or under construction or which
28179 have been authorized under existing law.

Q. Now, what are the total acreages apparent

from that that will be served with water in all private, wholly independent, enterprises?

A. 19,377,243 acres.

Q. And the total of the Federal will be what?

A. 13,515,751, of which 6,399,677 acres will be receiving a full supply of water and 7,116,074 acres will be receiving a part supply or will be otherwise benefited by repulsion of salt water intrusion or other beneficial methods.

Q. Now, how does the total of the non-Federal acreage compare with the acreage that you noted on Exhibit 226 as being wholly dependent in 1940 upon non-Federal works, based upon the reports in the preliminary tabulation of the Census of Irrigation?

A. Due to the fact that the Bureau of Reclamation program contemplates bringing supplemental water to or otherwise benefiting 5,354,353 acres, in addition to that for which supplemental service was available in 1940, the so-called non-Federal acreage that works are planned to supply with water will be reduced by more than 2,800,000 acres. This reduction comes about despite the fact that non-Federal enterprises, in this computation, are credited with 2,455,671 acres which the Census reports as possible additions to existing non-Federal systems.

Q. Do the figures indicate that much of the additional acreage you have mentioned can be brought under ditches by non-Federal enterprises.

A. I will state what the average cost per acre
28180 of the additional acreage which the estimates of the Census Bureau show, or the Census tabulations show—it is an average of $8.25 per acre. That is, if the additional acreage which appears on the preliminary census tabulation, which I believe is Exhibit 207, was brought in, with the estimated amount that the tabulation shows—that is, the acreage the enterprises have provided for to complete their systems—the average cost will be $8.25 per acre, and that is about one-third of the average cost, or less than a third of the average cost, of the non-Federal irrigation enterprises per acre that is shown by the Census tabulation.

Transcript pp. 28179, 28180 *Lineweaver—direct*

Q. So, under that figure, no additional acreage would be brought in?

A. I don't believe that much of it could be brought in for $8.25 an acre.

Q. Referring specifically to Colorado, what will be the principal increases in acreage dependent upon Bureau of Reclamation projects when the current Federal program is completed?

A. There will be 615,000 acres in the South Platte Valley dependent upon the Colorado-Big Thompson project for supplemental water, and about 400,000 acres in the San Luis Valley project in Southern Colorado, and less than 10,000 acres in the Paonia project in Humbolt, Gunnison and Delta Counties.

Q. Referring specifically to Wyoming, what will be the principal increases in acreages dependent
28181 upon Federal projects when the current program is completed?

A. The increases will be in new land brought in on the Heart Mountain division of the Shoshone project, and the Riverton project in Fremont County, and on the Kendrick project. Some additional acreage will be brought in on the Wind River project of the Indian Office.

Q. Now, referring specifically to Nebraska, what will be the principal increases in acreages dependent upon Federal projects when the current program is completed?

A. The only new project in Nebraska included in the current program is the Mirage Flat project of the water conservation and utilization program, which will bring in 12,000 acres.

Q. When the Federal program is completed, what proportion of the estimated ultimate area of 32,892,994 acres which all project works will be capable of serving will be dependent for primary or supplemental water on projects of the Bureau of Reclamation and Office of Indian Affairs?

A. A little more than 41 per cent, or 13,515,751 acres, about 37 per cent on projects of the Bureau of Reclamation and about four per cent on projects of the Office of Indian Affairs.

Lineweaver—direct *Transcript pp. 28180, 28181*

Q. How does the ultimate Federal acreage compare with the irrigated acreage reported by the Census of Irrigation for 1939 and the area which all works were capable of serving in 1940?

A. It is 65.7 per cent of the total acreage irrigated in 1939, and almost 50 per cent of the acreage all
28182 irrigation works were reported as capable of supplying in 1940.

Q. What explanation have you to make the footnotes in the lower left-hand corner of the map?

A. I have alluded to the additional acreage which private enterprises estimated in the Census schedules could be brought in when existing works were completed. This is referred to in Footnote (1). As to Footnote (2), there is a duplication of 136,000 acres in Washington State served with a supplemental supply by the Bureau of Reclamation through works constructed by the Office of Indians Affairs. I have referred to this duplication previously. When the Bureau of Reclamation program is completed, Anderson Ranch Reservoir of the Boise project in Idaho will provide approximately 160,000 acres of non-project land with supplemental water, a part of which land is now receiving supplemental water from Bureau facilities. A part of this 160,000 acres may be a duplication, but the acreage within the Boise project which Anderson Ranch Reservoir will serve is not duplicated in this tabulation.

Q. Now, were these Exhibits 227, 228 and 229 prepared under your supervision and direction?

A. They were.

Mr. Collett: We now offer in evidence United States Exhibits 227, 228 and 229.

* * * * *

28200 Q. Now, will you refer to the document marked as United States Exhibit 233, and state what that is, please?

A. Exhibit 233 is a compilation or list of the power plants in operation, under construction, or authorized on Federal Reclamation projects.

Q. From what source were the figures which appear on the exhibit obtained?

A. From the official records of the Bureau of Reclamation.

Q. What is the total ultimate installation in kilowatts shown on the table?

A. 4,633,162 kilowatts, of which 3,567,962 kilowatts are in plants now in operation, and the remainder is in projects under construction or authorized. More than 3,000,000 kilowatts are scheduled for installation by the end of 1944, as compared with about 1,100,000 kilowatts now actually in operation.

Q. How will the 3,567,962 kilowatts compare with the present total of hydroelectric installations in the United States?

A. The capacity is about thirty per cent of the total hydro-electric installations—between twenty-five and thirty per cent of the total current hydroelectric installations in the United States.

Q. Is the Bureau of Reclamation making any studies looking to the utilization of the water resources of
28201 the West for the development not only of irrigation but of western minerals and for processing and other manufacturing plants in the West?

A. Yes. On July 28th last, Assistant Commissioner Bashore presented to the Senate Subcommittee on Public Lands, of which Senator O'Mahoney of Wyoming is Chairman, which Subcommittee was investigating the possibility of developments of mineral resources in the West, and he presented a statement or a list of some fifty hydroelectric projects or multiple-purpose projects, which would bring in more than 8,000,000 kilowatts of capacity. From this list it was suggested that there could be selected projects which would meet power deficits of 2,500,000 kilowatts which the Federal Power Commission predicted would exist by 1946.

Q. Now, have you made any studies of the estimates of the demand which will be made to meet the needs of the Northwest, and particularly developments in Colorado?

Lineweaver—direct *Transcript pp. 28200, 28201*

A. I have made studies of the estimates of the demand, which indicate there is not sufficient capacity to meet the current needs, and that even after the emergency period is over that the demand for power in the West will require within a few years all of the additional capacity that will be installed now on account of the emergency.

In Colorado, the Green Mountain power plant of the Colorado-Big Thompson project on the Western Slope is scheduled to bring in 21,600 kilowatts in 1943. If a power market can be demonstrated for the output of any or all of the five plants of the Colorado-Big
28202 Thompson with 160,000 kilowatts on the Eastern Slope, and if that market can be shown that will justify priorities for supplies and equipment, the construction of the Continental Divide tunnel may be advanced. That is the key factor of these features of the Colorado-Big Thompson project being advanced—in other words, that the Bureau can go to Congress in the emergency and get appropriations that otherwise perhaps would not be possible unless the power market existed.

Wyoming interests are urging the need for power from the proposed Kortez plant on the North Platte River between Seminoe and Pathfinder.

Q. Are all of these multiple-purpose developments of the Bureau linked with irrigation?

A. They are, invariably, and the operating practice is to give preference to irrigation in the use of water, as illustrated by the practice with respect to the Guernsey Dam and the Boulder Dam on the Colorado River in the Pacific Southwest, although irrigation pays a good part of the cost of Boulder Dam.

Q. Referring now, Mr. Lineweaver, to Exhibit 233, was that prepared under your supervision and direction?

A. Yes, sir.

Mr. Collett: I now offer in evidence United States Exhibits 232 and 233.

* * * * *

28499 IRVING J. MATHEWS, called as a witness herein in rebuttal on behalf of the United States, being first duly sworn according to law, on his oath testified as follows:

Direct-examination by Mr. Kirgis.

Q. Will you please state your name, Mr. Mathews?
A. Irving J. Mathews.
Q. And your age?
A. Fifty-two.
Q. Where is your residence?
A. Casper, Wyoming.
Q. Will you please state your occupation or profession?
A. Civil Engineer.
Q. Are you now employed by the United States Bureau of Reclamation?
A. I am.
Q. In what capacity are you employed by that Bureau?
A. Construction Engineer, Kendrick project.
Q. For how long have you been construction engineer on the Kendrick project?
A. Two and a half years.
Q. What position on the Kendrick project did you hold prior to being construction engineer?
A. I was resident engineer on the construction of the canals, laterals and power distribution systems.
28500 Q. How long did you hold that position?
A. About four years.
Q. In one or the other of those two capacities that you have mentioned, have you been associated with the Kendrick project practically the entire period of time it has been under construction?
A. Yes.
Q. How long have you been employed by the United States Bureau of Reclamation?
A. Twenty-seven years.
Q. Now, as construction engineer of the Kendrick project and also in your former position as resident engineer on canals and other works, is it your duty, and has it

been your duty, to be familiar not only with the works being constructed by the United States but also with the land ultimately to be irrigated under the Kendrick project?

A. Yes.

Q. Are you familiar with the location and character of those lands proposed to be irrigated?

A. Yes.

Q. Now, in your employment on the Kendrick project, are you also required to be familiar with the character and topography of the lands in the general area of the project, including those to be irrigated and surrounding lands which may not be irrigated?

A. Yes.

Q. Are you familiar with the character and topography of those lands, the lands to be irrigated as
28501 well as the immediately surrounding lands?

A. Yes.

Q. Will you please explain why it is necessary that you have this knowledge, particularly regarding the lands of the project area as a whole?

A. Well, in designing a canal and lateral distribution system it is necessary to know the topography and character of the adjacent lands for drainage purposes, the size of the cross-drainage structure, and so forth.

• • • • •

28507 Q. Are there any surface depressions or sump areas on this project which might collect or hold waters which otherwise would constitute part of the return flow from the irrigation on the project?

A. Yes.

Q. By reference, if you wish, to the map, United States Exhibit 259, can you indicate in a general way the location of any such areas on the first unit of the project?

A. There are two areas—

28508 Q. Just a moment, Mr. Mathews. On what page of United States Exhibit 259 do those appear?

A. On Page 3.

Q. Now, will you indicate generally where those two areas are?

A. There is an area in Section 5, Township 33 North, Range 80 West, and an area in about Section 9, Sections 8 and 9, in that same township and range.

Q. Are both of those in the lower left-hand corner of Page 3?

A. Yes, sir.

Q. In the township which is the lowest and the farthest left on that page, is that correct?

A. Yes, sir.

Q. Now, have any drainage works been constructed for the purpose of draining water out of those two sump areas?

A. Yes.

Q. Have both of them been drained?

A. Yes, sir.

Q. Now, are there any sump areas on the first unit to which drainage works have not been constructed which are capable of draining the areas completely?

A. No.

Q. Can you state the approximate surface area of the sumps that are on the first unit to which you have referred at an elevation equal to the lowest point on the rim of land surrounding the sumps?

28509 A. Approximately nine hundred acres.

Q. How have you determined that area?

A. We have planimetered this area off the topographic map.

Q. What, if you know, is the total surface area which might drain into these sumps on the first unit?

A. Approximately nine thousand acres.

Q. How have you determined that approximate acreage?

A. By planimetering the topographic maps.

Q. Now, what, before the construction of the drains, normally because of the run-off from precipitation in this area?

A. It would run into this sump and was lost by seepage or in evaporation.

Q. Has the construction of the drains, then, had any effect on the amount of water flowing to the North Platte River in this area?

A. Since these drains have been constructed—for instance, in August, 1941, we had a cloudburst in this vicinity, and as a result of these drains being constructed there was a return flow to the North Platte River of approximately fifteen hundred acre feet.

Q. You said "return flow." Didn't you mean the run-off occurring from the precipitation during that cloudburst?

A. That is correct.

Q. Would that water have gone to the North Platte River prior to the construction of these drains?

A. No, sir.

Q. Can you indicate, generally, the location of
28510 the point where these drains discharge into the North Platte River?

A. These drains discharge into the river in Section 22, Township 33 North, Range 80 West.

Q. Is that, again, in the lower left-hand corner of Sheet 3 of Exhibit 259?

A. Yes, sir.

Q. Now, will you indicate, again by reference to Exhibit 259, if you wish, the general location of any sump areas or surface depressional areas which may exist on the second unit of the project?

A. There are three in the second unit, all shown on Page 3 of this exhibit. There is one in Sections 6 and 7, Township 34 North, Range 78 West, and there is one in Section 26, Township 35 North, Range 79 West.

Q. Now, have any drainage works been constructed in these sump areas which you have indicated in a general way on the second unit of the project?

A. No.

Q. Are there any presently developed plans for the construction of drainage works to these sump areas?

A. Preliminary only.

Q. Have there been any developed plans for any of the works of the second unit of this project as yet, Mr. Mathews?

A. Preliminary only.

Q. Mr. Mathews, a moment ago I interrupted an answer of yours. Had you completed your answer in locating what I believe you stated to be three sump areas
28511 in the second unit?

A. No, I had not.

Q. Will you please, then, again state the location of the three sump areas, in a general way?

A. The second one is in Section 33, Township 35 North, Range 79 West, and also extends over into Section 4, Township 34 North, Range 79 West, and the third one is in Sections 22, 23, 27 and 28, Township 34 North, Range 79 West.

Q. Will you give again the location of the first one, so that we may have them all at one point?

A. That is in Sections 6 and 7, Township 34 North, Range 78 West.

Q. Can you state the approximate area of land proposed to be irrigated under the second unit, the return flow waters from which might be expected to drain into these sump areas which you have described?

A. Approximately fourteen thousand acres.

Q. Will you explain the basis of your determination of that approximate area?

A. We planimetered the area from the topographic maps.

Q. Can you state the approximate surface area of the three sumps to which you have referred on the second unit at an elevation equal to the lowest point in the rim of land surrounding them?

A. Approximately eighteen thousand acres.

Q. How did you arrive at that approximate
28512 figure?

A. We planimetered the areas from the topographic maps.

Q. What, if you know, is the total area which drains into the sumps on the second unit?

A. Approximately 105,000 acres.

Q. How have you determined that?

A. We did not have topographic maps of the entire section, so I drove out over it and estimated it as close as was possible, without going into detail.

Q. You didn't make an instrument survey, did you, Mr. Mathews?

A. No, sir.

Q. Now, what, in normal circumstances, becomes of the run-off from precipitation in this area?

A. It runs into these sumps and is lost by seepage or in evaporation.

Q. If drains were constructed to those sumps, would there be a resultant increment to the normal flow into the North Platte River, as you have indicated in the case of the sumps on the first unit?

A. Yes, sir.

Q. Do you have any basis for making an estimate of how much that might be in normal years, irrigation disregarded?

A. I would estimate it to be nine or ten thousand acre feet.

Q. Upon what do you base that estimate?

A. I have taken the total area and divided by twelve, which is the normal run-off that may be expected from the kind of land that is in this area.

Q. Are you able to state what is the area of
28513 those three sumps which might become flooded if there were no drainage works after irrigation is commenced on the second unit of the Kendrick project?

A. Approximately 2,750 acres.

Q. Now, is it feasible from an engineering standpoint to construct works to relieve these sumps of the waters which might collect in them when irrigation is commenced on the second unit of the project?

A. Partially but not entirely.

Q. Will you describe briefly the general location and

character of such drainage works as, in your opinion, might be feasible?

A. We would drain the first sump mentioned into the second sump mentioned and the second one into the third, and from there to the river.

Q. Have you actually looked over that area with the thought in mind of the feasibility of constructing drainage works of this type?

A. Yes.

Q. What, in a general way, is the nature of the material which you might have to go through in the construction of those works?

A. It is just ordinary sand and clay, with some deep cuts.

Q. It would be necessary to make some deep cuts in the construction of these drains?

A. Yes, sir.

Q. Would it be possible to make these cuts sufficiently deep to drain all three of these sumps to their
28514 lowest level?

A. No, it would not.

Q. Upon what do you base that judgment?

A. Well, you have to balance the cost against the land that might be prevented from flooding and the loss of water through evaporation.

Q. Do I understand correctly, then, that there is no engineering reason why the drains could not be constructed to the bottom of the sumps, but that there is a problem of the economic feasibility which might require that they be not constructed to the bottom elevation of the sumps?

A. That is correct.

Q. Now, by comparing this situation on the proposed second unit with the situation on the first unit, on which you have said that drains have already been constructed, would you say that in the normal course of events these drains would or would not be constructed to those three sump areas on this second unit?

A. They would be constructed.

Q. Would you please explain any benefits which might result from that which would make desirable the construction of the drains?

A. It would prevent the encroachment of the sump areas onto the irrigable lands of the project and eliminate the loss of water in the sump areas by evaporation.

Q. Are you able to state the areas of the water surface which might remain in these three sump areas in the second unit below the elevation of the feasible
28515 drainage works to which you have referred?

A. Approximately 750 acres.

Q. Now, would the cost of the construction of works of the type necessary to take surface elevation of the water down to that point be, generally speaking, comparable with the cost of drainage works which have been already constructed to the sump areas on the first unit?

A. It would probably be more expensive.

Q. Would it be any appreciable amount more expensive?

A. No.

Q. Mr. Mathews, how did you determine this figure of 750 acres that you gave a moment ago as the surface area of the water which might remain in the sumps after construction of the drainage works?

A. We planimetered the area in the sumps down to the elevation which we proposed to drain each sump.

Q. What is that elevation, Mr. Mathews? Could you state that?

A. I cannot state that offhand. It was different for each sump.

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28523 Q. In connection with the sump areas which you have described in the second unit, you mentioned and described three of them?

A. Yes, sir.

Q. Those sump areas, or some of them, are described on the map, Exhibit 259, as lakes, are they not?

A. One of them is called Nine Mile Lake, I believe. That is the only one that I know that has a name.

Transcript pp. 28514, 28515 *Mathews—direct*
Transcript p. 28523 *Mathews—cross by Nebraska*

Q. The one that lies in Sections 33-35-79 and 4-34-79 has the word "Lake" written there, does it not?

A. That is the so-called Nine Mile Lake.

Q. That lake itself does not cover the entire sump area, I suppose?

A. No, sir.

Q. That is to say, the lake could fill up considerably more than that without spilling or overflowing?

A. Yes.

Q. In connection with the first one that you described, the one down in Township 33, Range 80, in Sections 9 and 10, it has the word "Lake" in it, does it not?

A. The first one was over there in Township 34-78.

Q. That is in the second unit, is it not?

A. You mean this one here (indicating)?

Q. In the first unit, the first one you de-
28524 scribed.

A. Yes.

Q. The word "Lake" appears there, does it not, across the section line that divides Sections 9 and 10, in the lower part of the map?

A. Yes, it does.

Q. What lake is that?

A. I never heard of a name for it.

Q. Is there water in that lake at times in the year?

A. Up until the time the drain was constructed there was water there in the spring of the year.

Q. That drain has taken all of the water out of that lake?

A. Yes, sir.

Q. You stated, I believe, that without the drainage this water would be lost either in evaporation or seepage, that is correct, is it not?

A. I did.

Q. In connection with that seepage, you don't know whether that seepage goes into the underground water table and helps to feed the North Platte River or not, do you?

A. I don't know anything about that. I presume it does.

Mathews—cross by Nebraska Transcript pp. 28523, 28524

Q. And if it does, then all that the drainage has accomplished is merely to eliminate the evaporation, because the other waters would ultimately reach the North Platte River anyway, isn't that correct?

A. I presume that is substantially correct.

28525 Q. So that the only advantage obtained by drainage is the elimination of the losses by evaporation?

A. That is correct.

Q. In connection with these three sump areas under the second unit, of course, that will not become material at all unless there is irrigation in that area, is that correct?

A. Yes.

Q. You stated there was a total area of approximately 105,000 acres which drains into these three sumps. Does any of that 105,000 acres lie within the first unit of the Kendrick project?

A. No, sir.

Q. It is all within the second unit?

A. Yes, sir.

* * * * *

28536 CARROLL EDWARD DOBBIN, called as a witness in rebuttal herein on behalf of the United States, being first duly sworn according to law, on his oath testified as follows:

Direct Examination by Mr. Kirgis.

Q. Mr. Dobbin, will you please state your name?

A. Carroll Edward Dobbin.

Q. What is your age?

A. Forty-nine.

Q. Where do you live?

A. Denver.

Q. What is your profession or occupation?

A. Geologist.

Q. Will you please outline briefly the extent of your academic education in geology and state any degrees which

you have received, and the dates and circumstances of those degrees?

A. I received the degree of A. B. in Geology at Colby College, Maine. in 1916, the degree of Ph. D. in Geology at Johns Hopkins University in 1924, and the honorary degree of Doctor of Science at Colby in 1941.

Q. What is your present employment, Mr. Dobbin?

A. Senior Geologist, United States Geological Survey.

Q. How long have you been a geologist with the United States Geological Survey?

A. Since 1918.

28537 Q. Will you please state the scope of your functions and your responsibilities in your employment with the United States Geological Survey?

A. At the present time I am Geologist in charge of the Geological Survey office in Denver, dealing with the geology of oil, gas, coal and non-metallics in the Rocky Mountains and contiguous provinces.

Q. Has this employment necessitated an extensive examination of and familiarity with geologic conditions in the State of Wyoming?

A. Yes, sir.

Q. Will you please state generally the extent of your familiarity with geologic conditions in Wyoming?

A. My first geological work in Wyoming was in May, 1918, and with the exception of a few field seasons subsequently, I have geologized parts of Wyoming most of the seasons thereafter.

Q. Now, will you please state what employment, other than your employment with the United States Geological Survey, or what practical experience other than that with that organization, you have had in connection with geology?

A. I worked for the Maryland State Geological Survey in the coal-bearing regions of Western Maryland, and for the Golf Oil Company in the southern part of the Republic of Panama.

Q. Was this prior to your employment with the United States Geological Survey?

A. That employment with the State of Maryland was, and that in the Republic of Panama was during the period from January to June, inclusive, 1925.

28538 Q. Are you the author of any publications dealing with geology?

A. Yes.

Q. Will you state what those publications are and mention any which specifically deal with the geology of Wyoming?

A. These publications are bulletins and professional papers and press releases of the United States Geological Survey and scientific published articles on geology published in the geological and other scientific journals, and with respect to the State of Wyoming I have had published a bulletin on the Rock River oil field in Albany County, a published bulletin on the geology of the Gillette coal field in Campbell County, a published bulletin on the Carbon and Hanna basins, and a published bulletin on the Pumpkin Buttes coal field, and scientific researches on the late Upper Cretaceous and Tertiary formations, published as a professional paper by the Geological Survey, and rather numerous press releases, geologic maps and other incidental geologic data concerning the State elsewhere.

Q. Are you familiar with the geology of Natrona County, Wyoming?

A. Yes.

Q. Will you explain the extent of that familiarity?

A. I have done detailed geologic mapping in the Bates Hole District, and I have done some rather detailed mapping in the area northwest of the Big Muddy oil field —I wish to correct that statement, as it was reconnaissance mapping—and during the years that I have been in Wyoming I have ridden over Natrona County and looked over the geology of the county in a reconnais-

28539 sance manner, other than the areas that I have mapped in detail.

Q. Do you know whether the lands proposed to be irrigated under the Kendrick project by the United States Bureau of Reclamation lie within Natrona County, Wyoming?

A. They do.

Q. Have you recently made field trips to Natrona County, Wyoming?

A. Yes.

Q. Will you please state the dates and the purposes of those trips?

A. I was there on November 4th, 5th and 6th, 1941, and November 22nd. The purpose of those trips was to make a geology reconnaissance examination of the lands enclosed within the borders of the Kendrick Irrigation Project.

Q. During those trips, were the climatic and other conditions such that you had an opportunity to observe the surface geological conditions?

A. On the first three days, on November 4th, 5th, and 6th, they were perfect.

Q. What was the situation on the fourth day that you mentioned?

A. On November 22nd there was snow on the ground, but the purpose of my trip principally that day was to observe topographic conditions rather than geologic, and I was not hindered much in that examination.

28540 Q. During those trips, were you able to identify the lands proposed to be irrigated under the Kendrick project?

A. I could.

Q. How did you accomplish that identification?

A. They were pointed out to me by Messrs. Mathews and Wagner of the United States Bureau of Reclamation office at Casper. We used maps, and I also personally inspected the iron posts at the land corners over the entire project.

* * * * *

28549 Q. Are you familiar with the fact that in certain localities in that general area covered by this project are surface depressions or sump areas?

A. I am.

28550 Q. Are you familiar with the fact that they have no natural outlet?

A. I am.

Q. Have you seen those areas?

A. I have.

Q. Do you have any opinion as to the effect which those areas may have, if any, in the recapturing and possible loss of what might otherwise be return flow waters from the lands to be irrigated under the Kendrick project?

A. In my opinion, the return flow waters in those areas will go into the central part of those sumps. I make that statement on the basis of topographic relations largely. They will be retained there until removed either by evaporation or by human means.

Q. Referring to the sump areas in the proposed second unit of the project, which have been described and located by other witnesses, can you state whether the geologic conditions under the surface of the land there will have any particular effect on the accumulation of waters in the sumps?

A. In my opinion, the geologic conditions beneath these sump areas are such that the water will remain indefinitely in the sump areas until removed by evaporation or by human agencies.

Q. It is your opinion that there is little opportunity for underground percolation from these sumps, is that correct?

A. That is correct.

Q. Is that based upon your knowledge of the
28551 geologic conditions there?

A. Yes, sir.

Mr. Kirgis: The witness is available for cross-examination.

Mr. Good: No cross-examination by Nebraska.

Cross-Examination by Mr. Wehrli.

Q. Mr. Dobbin, are you familiar with the area known as the Nine Mile Lake area?

A. I have ridden across there many times.

Q. And that is what you have referred to, I presume, as one of the sump areas?

A. It is that general area, that depression area, yes.

Q. I don't know whether you were over that area or whether you are aware of the fact that in the late 1920's, and perhaps until 1930 or 1931, there was continuously quite a large water surface in that area?

A. Yes, I have ridden over that when we went out from Casper and swung around to the west, and the water was several feet, I would guess six feet high on the telephone posts.

Q. The water was over the highway there in several years, was it not, or, at least, at the time that you were there?

A. That is my recollection of it, in 1921, 1922, 1923 and 1924, along in there.

Q. Does the existence of that water in that area confirm your opinion that it is not carried away
28552 readily by underground percolation?

A. That water was carried away by evaporation and by pumping it to the Salt Creek oil field.

Q. As I say, however, that would confirm your opinion, would it not, that it would not be readily carried away by underground percolation?

A. It does, yes, sir.

Q. Of course, if artificial drainage were applied, some water from that area might be carried back to the North Platte River, assuming that it is physically possible, which, of course, I don't know whether you are qualified to say?

A. I am not qualified on that matter.

Q. But, in the absence of artificial drainage, the water, in your opinion, would remain when it is once collected in these areas until taken by evaporation?

A. Yes, or by human agencies.

Mr. Wehrli: That is all.

Mr. Breitenstein: Colorado has no questions.

Mr. Kirgis: No redirect.

(Whereupon, the witness was excused.)

* * * * *

Dobbin—cross by Wyoming Transcript pp. 28551, 28552

Q. Mr. Dibble, do you have before you a document which has been marked for identification as United States Exhibit 268?

28644

A. Yes.

Q. Will you explain in general what that exhibit constitutes?

A. This exhibit shows the interceptions by the Tri-State Canal, based upon the historical records.

Q. By "interceptions," what do you mean?

A. The amount of water that the Tri-State Canal obtains from drains and water courses along its length, other than the North Platte River.

Q. These, then, are in effect interceptions of return-flow waters, is that correct?

A. Yes.

Q. I notice that on either side of this exhibit there are figures indicating a scale, but it is not stated what is represented by those figures. Can you state that, Mr. Dibble?

A. That is second feet, cubic feet per second. I believe that has been inserted on the exhibits that have just been passed out.

28645

Q. On this exhibit, I notice, as I did on the last, that there are black dash or hatched lines in the columns for each month, with figures just above those lines. Will you please explain what those may be?

A. Those lines are the average flow in second feet intercepted by the Tri-State Canal for the month in which the lines are used. In other words, in May the average interception by the Tri-State Canal would be 43.9 second feet.

Q. From what source did you get the data regarding those average interceptions?

A. These came from the Nebraska Biennial reports.

Q. Over what period of time were those figures obtained?

A. They are for the seven years which are noted at the beginning of the sheet. They are the same seven years to which I have previously referred.

Q. Is the value shown for each month and the average value for the month from those seven years?

A. Yes.

Q. Now, how was the curve itself, as indicated by the heavy black solid line, derived?

A. That is drawn to show the progressive day-to-day change during the month in the interceptions, and at the same time develop the average which is shown on the dash line.

Q. Was this curve plotted or calculated in the
28646 same manner as the curve on United States Exhibit 267, which you described a short time ago?

A. Yes.

Q. Now, in order to understand this curve a little better, may I refer you to the fact that in the column for July there is a very decided dog-leg in the curve. How does that come about? What is the explanation for that?

A. That is put in to make it possible to balance these areas and divide the solid line into sections of straight lines. There is nothing scientific about that dog-leg. That is purely a matter of assistance in calculation of the figures and to make it come out correctly as an average, and at the same time to make it reasonably consistent with the use of water and the curves for it in May, June and August.

Q. Was this document marked as United States Exhibit 268 prepared under your supervision and direction?

A. Yes.

Mr. Kirgis: I offer in evidence United States Exhibit 268.

Mr. Good: May I ask the explanation of certain features here, not necessarily as cross-examination?

Mr. Kirgis: Yes, of course.

Examination by Mr. Good.

Q. Mr. Dibble, what is the meaning of the figures which appear on the horizontal lines such as the "23"
28647 just above the horizontal line which would represent 125 second feet, along about the 25th of June?

A. I am not sure, without the work sheets to check with.

Q. There is a similar one of "47" just on the 150 second foot line and about the 5th day of August, and then there is the figure "88" on a vertical line between August and September, and at about the 175 second foot line?

A. I will have to check that with the work sheets to tell you.

Q. I understand that the other figures along the vertical lines representing the divisions between month represent the number of second feet at the point where the curve crosses that vertical line.

A. Yes.

Q. That is to say, for May 1st, 20 second feet; for May 31st or June 1st, 87 second feet; for June 30th or July 1st, 113 second feet; for July 31st or August 1st, 178 second feet; and for September 30th, 199 second feet?

A. That is correct.

Q. Might it be that this one on the vertical line between August and September should be 188 instead of 88?

A. Yes, I think that is correct.

Q. It looks to be at about the 188 figure, or about 187 and one-half?

A. I am quite certain—

Q. That should be 188 there, then?

A. Yes, I am sure that is right. The tracing
28648 from which this was made was made by another man than the one who calculated these quantities, and there may be something of that sort. I think, if you will permit me to check this with the figures from the work sheets, I can straighten it out.

Mr. Good: I did not intend to call this cross-examination, but I wanted to understand that.

Mr. Kirgis: That is quite right.

The Witness: There is another figure that was not referred to, and that is the total of 39,000 acre feet, which

occurs on the curve, and that is the total of the annual interception.

Mr. Kirgis: That is the average for the seven years?

The Witness: That is the average for the seven years.

Mr. Kirgis: The average seasonal interceptions for the seven years that have been taken?

The Witness: And the quantities of water represented by this curve and the total of 39,000 acre feet.

Mr. Kirgis: That is in second feet but converted to acre feet?

The Witness: Yes.

* * * * *

28688 Q. Are there any comments concerning columns 36 to 40, both inclusive, that need to be made, in addition to the explanation already given of similar columns in connection with other reservoirs, as shown on this Exhibit 271? In that connection, may I call your attention to Column 39?

28689 A. Possibly I should also speak of Column 38 before we pass by it. Column 38 is the releases for irrigation from Guernsey reservoir, and has been brought forward from Column 46 on Sheet 2 and Sheet 4 and Sheet 6, the corresponding pages of Sheets 1, 3 and 5. This is the irrigation demand upon the Guernsey reservoir as computed from the requirements and allowances made for irrigation below.

Column 39 is the uncontrollable and undivertible water above the Tri-State Dam. It is the water in excess of the requirements of these projects that are above the Tri-State Dam. Part of that water may be divertible below Tri-State Dam, and, of course, a major portion of it becomes controllable in the Kingsley reservoir.

Q. Mr. Dibble, in that connection, when you use the phrase "above Tri-State Dam," do you include also the diversion of the Tri-State Canal?

A. Yes.

Q. That is considered a diversion above the Tri-State Dam, is that correct?

A. Yes, and also included is the amount of water that is estimated as necessary to allow for regulation of the river at the Tri-State Dam. This figure has been computed day by day during the controlling months, in order to determine the time of the month when a change may occur. That is, in other words, the records for each day are taken into account, so that if a change comes in the middle of the month, the operation of the river is varied at that time, and that has added considerably to
28690 the work involved in making the study, but it gives a better picture of the conditions on the river and the amount of water that is uncontrollable and undivertable. This column is further explained in Note G on Sheet 7.

Q. May I ask, Mr. Dibble, the derivation of the monthly figures that appear in Column 39—the manner in which they are derived from the daily figures which you state have formed the background for the values in Column 39?

A. They have been, to some extent, worked out on the work sheets which support this main exhibit.

Q. You mean, when you say "to some extent worked out on the work sheets," the work sheets supporting all of these figures?

A. Yes, from the work sheets particularly for the daily figures.

Q. From the work sheets supporting all of these figures?

A. Yes.

Q. But for inclusion in this record, in order to save time, you have merely selected some of the work sheets, is that what you have in mind?

A. That is correct, yes. Another thing that is involved in the computation of Column 35 is that the Guernsey reservoir is only reduced to the level at which it contains 5,000 acre feet, based on the capacity curve which has been introduced in evidence in this case. The number of that exhibit is United States Exhibit 246.

Q. Mr. Dibble, in that connection, can you state whether the Guernsey reservoir retains an adequate head for the development of power when it is reduced as low
28691 as 5,000 acre-foot capacity?

A. Yes.

Q. It does?

A. It does. The capacity of the reservoir as shown on the same curves, at the time the reservoir spills, is 50,900 acre feet, and there is no uncontrollable or undivertible water released except as that reservoir is full.

Q. In other words, the only water appearing in the values of Column 39 is water which has to be spilled out of Guernsey because of the fact that it has no additional capacity to hold it, plus this 5,000 acre feet per month which is provided for, which has been called "Regulation."

A. Yes. Column 40 is then computed from the amount of the releases for irrigation plus the uncontrollable and undivertable flow—Columns 38 and 39.

Q. Are there any further comments regarding any of these columns, Columns 36 to 40, inclusive, of the values shown in them, as they may appear upon any sheet of this proposed Exhibit 271?

A. I think not.

* * * * *

Q. Will you refer to Column 49, which is
28703 headed "Spill at Guernsey not Diverted," and explain the meaning of that and the derivation of the values in the column?

A. This is the amount of spill from the Guernsey reservoir which cannot be diverted or used above the State line. The figures are the same as those in Column 39, which is entitled "Uncontrollable and Undivertible above
28704 Tri-State Dam."

Q. You stated a moment ago, Mr. Dibble, in connection with Column 49, that that was water not diverted above the State line. Do you mean above the State line or above the Tri-State Dam?

A. Above the Tri-State Dam.

* * * * *

28741 Q. Mr. Dibble, do you have before you a document which has been marked for identification as United States Exhibit 273?

A. Yes.

Q. Is Exhibit 273 constructed in precisely the same manner and by use of the same general formulas as Exhibit 271, which you have already explained?

A. There are a few points of difference in the construction, but in general it is identical as far as column headings are concerned, and the formulae are identical.

The points of difference which exist in the construction, aside from the figures themselves, are that the study starts with 1930, assuming the reservoir is full at that time, in accordance with the figures derived in Exhibit 272, so that we have gone through the study for the years prior to 1930.

Q. Now, what is the principal point of distinction between this exhibit and Exhibit 271?

A. This study is made to include the diversions and use of water and return flow by the Kendrick project, with both units, totaling 66,000 acres, in operation.

APPENDIX VI

EXHIBITS

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EXHIBITS REPRODUCED

Nebraska:

Nebraska	567	
"	570	
"	571	(Part only)
"	572	
"	574	
"	575	
"	576	(Part only)
"	577	

Wyoming:

Wyoming	1	
"	3	
"	7	(Part only)
"	8	
"	11A	
"	31	(Part only)
"	33	
"	34	
"	35	
"	58	

Colorado:

Colorado	39	
"	40	

United States:

United States		7a	(Part only)
"	"	7b	(Part only)
"	"	8	(Part only)
"	"	10	
"	"	11	(Part only)
"	"	17	(Part only)
"	"	18	(Part only)
"	"	19	
"	"	23	(Part only)
"	"	24	(Part only)
"	"	25	(Part only)
"	"	26	(Part only)
"	"	31	
"	"	32	(Part only)
"	"	33	(Part only
"	"	35	(Part only)
"	"	44	
"	"	45	
"	"	46	
"	"	47	
"	"	48	
"	"	49	
"	"	72	
"	"	207B	
"	"	207C	
"	"	208	
"	"	227	
"	"	229	
"	"	233	
"	"	268	
"	"	278	(Part only)

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NEBRASKA EXHIBIT 567.

NOTICE OF SPECIAL ELECTION.

LEGAL NOTICE.

Notice of Special Election.

Gering and Fort Laramie Irrigation District.

Notice Is Hereby Given That a Special Election has been called by the Board of Directors of the Gering and Ft. Laramie Irrigation District to be held in said Irrigation District, in the State of Nebraska, on the 28th day of October, A. D. 1926, between the hours of eight o'clock a. m. and six o'clock p. m. of said day, for the purpose of voting for or against the approval of a certain contract to be entered into between the Gering and Fort Laramie Irrigation District and the United States of America, which contract is in the words and figures following, towit:

"Department of the Interior Bureau of Reclamation
North Platte Project Fort Laramie Division

Contract Between the United States and the Gering and Fort Laramie Irrigation District Providing for the Transfer of the Operation and Maintenance of the Irrigation Works of the Fort Laramie Division in Nebraska and for the Repayment of Construction Cost Upon a Crop Production Basis.

This Agreement, made this ..... day of ....., 192....., by and between the United States of America, hereinafter styled "The United States" acting for this purpose by ....., Secretary of the Interior, hereinafter called the Secretary, under the provisions of the Act of Congress approved June 17, 1902 (32 Stat., 388), and acts amendatory thereof or supplementary thereto, particularly Section 4 of the Act of December 5, 1924 (43 Stat., 701), all referred to as the Reclamation Law, and the Gering and Fort Laramie Irrigation District, a public corporation organized and existing under the laws of the State of Nebraska, having its principal

place of business at Gering, Scotts Bluff County, Nebraska, hereinafter called the District.

Witnesseth That:

Explanatory Recitals.

2. Whereas, the United States, under the said Reclamation law, is engaged in the construction of the North Platte project, and whereas, that portion of the Fort Laramie Division of said project which is within the State of Nebraska comprises approximately 57,000 acres and is identical with the lands of the District, and

3. Whereas, the parties hereto have heretofore, entered into a certain contract dated the 25th day of May, A. D. 1920, which is now in full force and effect and provides that the District shall collect and pay to the United States certain charges to be allocated by the United States to that portion of the Fort Laramie Division of the North Platte project which is within the State of Nebraska, and contemplates that the District will eventually assume the operation and maintenance of the irrigation system serving the lands of the District, and

4. Whereas, the District desires to secure the benefits of Section 4 of said Act of December 5, 1924, and to take over the care, operation and maintenance of that portion of the Fort Laramie Division of the North Platte project which is within the State of Nebraska.

Now Herefore, in consideration of the covenants herein contained, it is agreed as follows:

Transfer of Care. Operation and Maintenance.

5. Effective January 1st, 1927, there is hereby transferred to the District the care, operation and maintenance of the Nebraska portion of the said Fort Laramie Division of the North Platte project, from which time the United States shall not be obligated to do any work in connection with the operation, maintenance or repair of the said Nebraska portion of said Fort Laramie Division. The works transferred are as follows:

(a) That portion of the Fort Laramie canal as now or hereafter constructed which is located in Nebraska;

(b) All laterals and sublaterals diverting water therefrom;

(c) The portion, located in Nebraska, of all laterals which divert from the Fort Laramie canal in Wyoming and cross the Wyoming-Nebraska state line, and sublaterals diverting water therefrom;

(d) All works and structures appurtenant or incidental thereto or used in connection therewith now or hereafter constructed, including drainage canals, outlets or laterals and all other betterments;

(e) All buildings and appurtenances used for operation and maintenance purposes.

No title to any of the works passes.

Acceptance of Care, Operation and Maintenance.

6. The District hereby accepts the care, operation and maintenance of the Nebraska portion of said Fort Laramie Division and at its own cost, and without cost to the United States, will care for, operate and maintain said Nebraska portion of said Fort Laramie Division in full compliance with the reclamation law as it now exists or may hereafter be amended, the regulations of the Secretary now and hereafter made thereunder consistent with the provisions of this contract, and the terms of this contract and any other contracts in force affecting the transferred works in such manner that said works shall remain in as good and efficient condition for diversion and distribution of irrigation water as is now the case. The District shall use all proper methods to [redacted] the economical and beneficial use of irrigation

Present Contracts to Remain in Effect.

7. The said contract of May 25, 1920, will remain in full force and effect except as herein modified. The District shall perform and carry out in accordance with their

true intent meaning and to the satisfaction of the Secretary, all obligations imposed upon the United States in all contracts of whatever kind affecting the Nebraska portion of the Fort Laramie Division and now in force (or hereafter in force: Provided any such new contracts or any modifications of existing contracts are acceptable to the District Board as shown by a resolution of said Board duly adopted); and shall not attempt in any manner to change any of the terms of said contracts. Without intending to list all of the contracts affecting said Nebraska portion of said Fort Laramie Division particular reference is made to the following contracts:

Contract between the United States and the Gering Irrigation District dated March 3, 1925, and providing for the use of a portion of the Gering Canal and wasteway by the United States;

Contract between the United States and the Gering Irrigation District dated March 14, 1922, and providing for the construction, operation and maintenance of the Gering drain;

Those several contracts between the United States and the owners of land in Nebraska originally irrigated by means of ditches from Horse Creek and commonly referred to as "Unification Contracts."

In so far as is permited by law, and is not otherwise herein provided, the District shall have all rights and privileges under any and all such contracts as the United States now has or would have if this contract were not in effect. No contract affecting the project made by the District except for the usual labor, equipment, supplies and services in connection with the operation and maintenance of the transferred works and the delivery and distribution of water, shall be valid until approved by the Secretary and a draft of such contract shall be submitted to the Secretary for approval as to form before execution.

Delivery of Water by United States.

8. The United States will store for the District and release from Pathfinder reservoir and elsewhere and will divert at Whalen dam all stored water and all other water to which the lands of the District may be entitled under the contract between the United States and the District dated May 25, 1920, and will convey all said waters through the Fort Laramie canal and through the laterals crossing the Wyoming-Nebraska state line and will deliver said waters to the District at the intersection of the Fort Laramie Canal and said laterals with the said state line. It is understood and agreed that a contract is being negotiated between the United States and the Goshen Irrigation District under the terms of which the Goshen District would be substituted for the United States in carrying out the obligations of this article with reference to the conveyance of water to the state line.

Works Reserved by the United States.

9. The United States will operate and maintain the following, which are hereafter referred to as reserved works, namely: The Pathfinder dam and reservoir, the Guernsey dam and reservoir, the Whalen dam including the desilting basin and the wasteway therefrom to the river, and any dams or reservoirs to be constructed, together with works and property incidental to said dams and reservoirs and necesary for the protection and control thereof including buildings, the telephone lines from Pathfinder dam to Casper, Wyoming, and from Guernsey dam to Guernsey, Wyoming, the headquarters buildings and shops with the storage and material yards at Mitchell, Nebraska, the Guernsey dam power plant and the Lingle power plant with buildings and works appurtenant and incidental to both power plants, including the feeder canal from Laramie river to the Fort Laramie canal, all lines for the transmission of electrical energy, transformer stations and incidental equipment of every kind or nature now owned or hereafter acquired, also those portions of the Fort Laramie canal, and the laterals therefrom crossing

the state line which are located within the State of Wyoming, all telephone lines now owned or hereafter acquired by the United States, located in or used upon or in connection with the said Fort Laramie Division. The United States will also continue the measurement and distribution of water from the North Platte River to the District and other territory in the North Platte Valley.

Terms of Payment under Contract of May 25, 1920, Modified, Annual Construction Payment by District to the United States on Basis of five per cent of Average Gross Acre Income.

10. In lieu of the terms of payment provided in said contract of May 25, 1920, the construction charges agreed to be paid by the District to the United States shall become due in the following installments and upon the following terms and conditions in accordance with Subsection F of Section 4 of the Act of December 5, 1924, (43 Stat., 701); The District will pay to the United States each year a construction charge which will be determined by multiplying the average rate per acre (as announced by the Secretary) by the total number of irrigable acres in the District, as determined and announced by the Secretary. It is understood and agreed that the words "irrigable acres" as used in this article embrace only the lands in Classes 1 to 4 and that they do not include lands which in the determination of the Secretary are temporarily or permanently unproductive. The average rate per acre to be used in determining the annual construction payment to be made to the United States by the District under this article, shall be five per cent of the average gross annual acre income (as conclusively determined by the Secretary,) of the irrigable area (as conclusively determined by the Secretary) in cultivation in the District for the ten calendar years first preceding the year in which such announcement is made by the Secretary. For the purpose of determining the annual construction payment to be made by the District, all the irrigable lands are considered to be in one class, but it is agreed that the District, if it

so desires, may classify the said lands, and upon approval of such classification by the Secretary, may collect annual construction assessments at different rates per acre from said lands of the various classes; but the annual construction payments to be made by the District to the United States under said article will not be changed by such classification. The Secretary in announcing to the District the total number of irrigable acres upon which the construction charges are to be collected under this article will omit (a) any acreage upon which the construction charges as herein adjusted have been paid in full; (b) unentered public lands while in that status; (c) the acreage of state lands then in the district and which may not then be by law or by contract subject to assessment by the District; (d) the area of temporarily unproductive lands, as provided in section 26, act of May 25, 1926; and (e) lands acquired by the District on account of payment delinquency on which construction charges shall be suspended until such lands are sold or leased by the District, subject, however, to the condition that the construction charges against said lands shall not be so suspended for more than three years from the date the lands are so acquired, or for such period longer than three years as the Secretary deem advisable.

District to Increase Assessments to Cover Tax Sale Deficiencies.

11. The total sums due each year from the District to the United States are general obligations of the District, and the District will each year levy assessments sufficient to pay the same in full to the United States, together with any deficiencies established by tax sale as hereinafter provided. The District within two months after November 1 following May 1, upon which any such taxes become delinquent, will, the taxes still remaining unpaid, either purchase said land at tax sale, or (if the land have, within said period of two months been purchased by the County) will purchase the tax certificate or certificates held by the County. The District will not

during the period when it holds a tax sale certificate or a tax deed covering any land, permit such land again to be sold for taxes. If at the foreclosure sale the net amount realized is insufficient to pay the charges due the United States thereunder, the amount of the deficit arising from such foreclosure sale shall be reported by the District to the United States, and the district in the next assessment levied thereafter will include an additional levy to meet such deficiency. Provided, however, that no water shall be delivered by the United States to the District when the District is more than twelve (12) months delinquent in the payment of any construction or operation and maintenance installment, which the District has herein agreed to pay from assessments levied upon District lands. If the laws of Nebraska should be amended so as to make the provisions of this article relative to the enforcement of tax liens inapplicable, the District will nevertheless abide by the intent of this article, which is that the District shall proceed with all possible dispatch to foreclose such tax liens and to establish without avoidable delay the amount of any deficiency to result from the failure of the land sold at tax foreclosure sale to realize the sums due the United States from the District on behalf of such lands.

Future Announcements Effecting Construction Payments.

12. After the close of the year 1927 and each year thereafter, and prior to April 1st following, the Secretary will notify the District in writing of his findings in regard to the average gross annual acre income for irrigable lands in cultivation in the District for that year, and the average for the (10) year period, including such year and each preceding year within such period, unless the Secretary shall find the average gross acre income for such year to be so near the average last determined as to make no material difference in the rate previously determined in which event the rate last determined and stated by the Secretary shall continue. The failure of the Secretary to state his findings in regard

to the average gross acre income for any future year will be construed as equivalent to a finding by him that the average gross acre income for such year is the same as for the last preceding ten (10) year period, and that the rate last stated will continue.

Construction Charges Payable December 1.

13. The first annual construction charge to be paid by the District to the United States under Article 10 hereof will come due on December 1, 1929, and one annual installment on December 1 of each year thereafter. For the first three years, that is for the years 1929, 1930 and 1931, the payment of construction charges will be as follows: One-fourth of first annual installment shall be paid December 1, 1929; one-half of the second annual installment shall be paid December 1, 1930; and three-fourths of the third annual installment shall be paid December 1, 1931. The balance of the sums due on the first three years' installments shall then be covered into the construction charge, the full amount of the annual payments of which shall thereafter, beginning December 1, 1932, be payable each year on December 1, Provided, however, that whenever the District shall collect from assessments for construction and have on hand in its treasury at any time as much as five thousand dollars, the District will at once pay the same over to the United States until such prepayments have wholly prepaid the installments of the cost of construction due the United States from the District on December 1 next following such prepayment.

Delinquent Charges and Cost of Transferred Equipment Added to Construction.

14. All charges due and unpaid to the United States at the date of the transfer of the works, including interest and penalties, together with the book value of the equipment turned over to the District under Article 35 hereof, and the cost incurred by the United States in operating and maintaining the transferred works during the year 1926, shall be added to the total con-

struction obligation of the District to the United States as described in the said contract of May 25, 1920, and the new total thus established shall then be the new construction cost chargeable to the District.

Total Construction Charges Against Individual Tracts.

15. Annual construction assessments shall be levied against each tract of irrigable land (meaning irrigable acres as defined in Article 10 hereof) until the full construction charge apportioned to such tract has been paid, notwithstanding that other tracts of land may be sooner paid out and construction assessments (except for assessments to meet deficiencies as provided in Article 11) discontinued as to such other lands. Provided, however, that the District, subject to the provisions of Article 11, is to pay the United States the amounts above agreed upon irrespective of the defaults of individual landowners in meeting their assessments. The District shall increase its levy each year in order to obtain a sum sufficient to meet the deficiencies of the past years, as required in Article 11. Such increase may be levied upon all irrigable lands although the construction charges apportioned thereon have been fully paid, and the sums paid by the owners of such lands to make up the deficiency due to the failure of others to make payments shall not be considered as payment on the construction charges apportioned against such lands upon which such payments are made, but after the owner of any such land has fully paid the amount of the apportionment of construction benefits apportioned thereto as provided hereunder, such tract of land shall thereafter be subject to construction assessments only when the District is delinquent in its construction payments to the United States and to the extent necessary to meet its pro rata share of such delinquency as provided in Article 11.

Recital of Items Included in Payment by the District.

16. The District will pay to the United States, its successors and assigns:

(a) The construction charge (being the amount of

the construction costs allotted to the District in accordance with the contract dated May 25, 1920) as such charge is reduced by the credits as herein provided and other credits due the District, and as increased by (1) penalties, (2) operation and maintenance charges which are covered into the construction charge, (3) the price of equipment purchased by the District as covered into the construction charge, and (4) any other amounts added to said construction charge by the terms of this contract;

(b) The proper proportion chargeable to the District of the cost, including overhead, or operating and maintaining the reserved works as referred to in Articles 9, 18, 21 and 22;

(c) The cost, including overhead of the annual inspection and such additional inspection as shall be made at the the request of the District, or at the direction of the Secretary;

(d) The cost, including overhead of such changes, improvements and repairs which the United States makes when the District, after request by the Secretary or his representatives fails to change, improve or repair;

(e) The proper proportion chargeable to the District of the cost, including overhead, of any specific work or service not of a general administrative or supervisory character, whether done at the request of the District or at the direction of the Secretary, when in the opinion of the Secretary such work or service is advisable for the protection of the project works or water rights, or for the information of the United States.

Where the time for the payments agreed upon in this contract is not determined herein, such payments shall be made at such time as the Secretary may require.

Operation and Maintenance Payable in Advance.

17. The estimated operation and maintenance charge

applicable to each tract of land receiving water through the transferred works will be collected in advance, and water will not be delivered until such charge has been paid, in order to conform as closely as possible both to the provisions of Section 5 of the Act of Congress of August 13, 1914 (38 Stat., 686) requiring operation and maintenance charges to be based on the number of acre-feet of water delivered, with a minimum operation and maintenance charge whether water is used or not, and subsection N of Section 4 of said Act of Congress of December 5, 1924, requiring payment of the operation and maintenance charges in advance, it is agreed that the operation and maintenance charges to be collected in advance by the District beginning with the year 1927, may be based upon an estimate of the number of acre-feet of water to be used by each tract of land during the current year, it being assumed for the purpose of such estimate that the number of acre-feet to be delivered to each tract of land during the current year will be the same number of acre-feet delivered to such tract during the preceding year, and a charge will be made for each acre-foot of water to be delivered under said estimate and assumption, but with a minimum operation and maintenance charge per irrigable acre, whether the land is irrigated or not, entitling the landowner to the delivery of not less than one acre-foot of water per irrigable acre at the rate per acre-foot computed on the foregoing assumption.

Operation and Maintenance of Reserved Works Payable in Advance.

18. A detailed estimate of the total and of the proper proportion chargeable to the District of the cost, including overhead, of operating and maintaining the reserved works (including the net cost of the operation and maintenance of the Guernsey dam power plant, the Lingle power plant, all buildings and works appurtenant to said plants and all lines for the transmission of electrical energy with transformer stations and incidental equipment of every kind or nature now owned or hereafter acquired, and the

measurement and distribution of water from the North Platte River, and the cost of operation and maintenance of the Whalen dam and other works as described in Articles 21 and 22 hereof) shall be rendered by the United States to the District on or before April 1st of the year prior to the year in which the cost is to be incurred. The District shall pay to the United States the amount of such estimate on or before June 1st of the year in which the cost is to be incurred. At the end of each calendar year the Secretary will render to the District a detailed report of the actual cost of operating and maintaining said reserved works and of each of them, and of the proportion of such cost properly chargeable to the District. Said cost of said reserved works shall be divided by the Secretary among the several parties receiving water therefrom in proportion to their respective interests. If the payment exceed the actual cost, credit for the excess will be given on the succeeding payment. If the cost exceed the payment, an amount equal to such excess will be added by the District to the succeeding payment.

The electrical energy generated at any power plant constructed or to be constructed in connection with said reserved works shall be disposed of by the Secretary and credit given to the District for its proportionate share as determined by the Secretary of the profits thereof.

Uniform Operation and Maintenance Charge.

19. The operation and maintenance charges will be uniform per irrigable acre as to all lands using similar amounts of water and each irrigable acre for which the required payments have been made shall be entitled to the delivery of the same share of the available water supply of the District to which it would have been entitled under the various permits applicable thereto if the United States had continued to operate and maintain the transferred works.

District May Require Advance Payment as Toll Charge.

20. The District is authorized to require payment of operation and maintenance charges (including the charges due the United States for operation and maintenance of the reserved works) in advance as a toll charge and to withhold delivery of water until payment thereof is made.

Distribution of Operation and Maintenance Cost. Whalen Dam.

21. The cost of operation and maintenance of the Whalen dam, the Interstate canal from its head to Station 2 thereof, and the Fort Laramie canal from its head to Station 12 thereof, including the desilting basin and the wasteway therefrom to the river, shall be charged to all those lands for which water is diverted at Whalen dam, in proportion to their respective interests and benefits, the same to be determined by the Secretary.

Distribution of Operation and Maintenance Cost Fort Laramie Canal.

22. The cost of operating and maintaining the Fort Laramie canal from Station 12 thereof to the point of its intersection with the Wyoming-Nebraska state line and of those portions in Wyoming of the laterals which divert water therefrom and cross the Wyoming-Nebraska state line, shall be charged to the Lingle power plant and to the lands irrigable from the Fort Laramie canal.

Amounts Due United States a First Charge Upon Collections.

23. The amounts due the United States from the District for the operation and maintenance of the works reserved to the United States shall be a first charge upon the operation and maintenance collections of the District.

No Water to be Delivered Without Payment.

24. Pursuant to the provision of Section 6 of the Act of Congress of August 13, 1914 (38 Stat. 686) no

water shall be delivered to or for any tract of land in the District, the owners or holders of which shall be in arrears for more than one year in the payment of any charge for operation and maintenance or any construction charge and penalties, or any assessment levied by the District for the purpose of paying such construction or operation and maintenance charges, or who, beginning with the year 1927, shall fail to pay in advance the annual operation and maintenance charges: Provided that no tract of land in the District shall be deemed delinquent on which the District or any other party has paid all delinquent taxes.

Statement of Status of Payments Affecting Right to Water.

25. The District will furnish the United States a list of lands in the District which are entitled to receive water under the terms of the preceding article, which list shall be amended or supplemented from time to time after changes occur in regard to the status of said lands as to the qualifications to receive water, which list shall be available for the use of the United States in reducing the amount of water turned in at the head of the transferred works in proportion to the lands under said transferred works, which on account of delinquency in payment are not entitled to receive water. Water so withheld may be used by the District provided the District is not delinquent in the payment of any charges due the United States hereunder, upon other land in the District upon which the charges are paid. Should the Treasurer of the District at any time when the District has collected and has available in the hands of the Treasurer sufficient funds to make such payments fail to pay promptly to the United States the construction or operation and maintenance charges herein agreed to be paid by the District, the District will, upon notice from the Secretary, and as often as such notice is given, discharge such Treasurer and terminate his authority to act as Treasurer of the District and select another treasurer satisfactory to the Secretary to perform such duties.

Distribution of Water by District.

26. The District shall make proper distribution and delivery of water to all persons entitled thereto in full accordance with the provisions of the Reclamation Law, the contract of May 25, 1920, this contract, and the rules and regulations issued by the Secretary.

Water Turned Out of Pathfinder and Guernsey as Ordered.

27. The water to be delivered to the District under the provisions of this contract from the Pathfinder and Guernsey reservoirs, shall be turned out as ordered by the District at a rate not in excess of the District's pro rata share of the outlet capacity of the reservoir, provided the United States be notified by the District of the times and rates of delivery desired in abundant time to enable it to transmit the proper instructions to its agents in charge of dam and storage reservoirs, and in any event at least six (6) days prior to the time that delivery is to be made, and provided, further, that the total amount which the District shall have the right to order from said reservoir during any irrigation season shall not exceed the proportionate share of water actually available from said reservoir to which the lands of the District receiving water from the transferred works are entitled.

While there is an adequate supply of water in the Pathfinder and Guernsey reservoirs, the amount of water delivered to the District shall be limited only by the carrying capacity of the Fort Laramie canal: Provided, however, the United States shall not be responsible for failure to impound, carry, or deliver water caused by unavoidable delays in construction work or for insufficient supply of water in the canals, hostile diversion, or drought, interruption of service made necessary by repairs, nor on account of any other distribution than that herein stipulated for, directed, or ordered to be made by any valid or subsisting order or decree or a competent court; nor for any damage caused by floods, acts of hostility or unavoidable circumstances, nor for

the loss of crops or other damage caused by non-delivery of water.

Water Developed in Drains.

28. The irrigable land of the District may have the use and benefit of the water supply developed in the drainage system in said division in so far as the same equitably belongs to the United States, and the diversion thereof does not conflict with any existing contract right or rights acquired through the diversion and use of such water through works constructed by the United States for the purpose of conveying and utilizing such water on other divisions of said project; the said right to divert and utilize any portion of said drainage water to be conditional upon the District furnishing the means of diverting or pumping such water from the drains into the canal system and paying the cost of the operation and maintenance of the necessary pumps or other means of diversion.

Rights of Way for Drains, etc.

29. All ditches, whether constructed by the United States or by the District and whether for laterals or drains, hereafter constructed within the exterior boundaries of the District, and all outlet channels or other canals from the territory of the District through other lands which lay between the District and the river, shall be ditches or canals constructed by the authority of the United States within the purview of the Act of August 30, 1890 (26 Stat. 391); and the District may exercise any and all rights which the United States might exercise for the necessary construction and operation and maintenance of such ditches or canals.

Repair of Project Works.

30. No substantial change in any of the transferred works shall be made by the District without first having obtained written consent from the Secretary until payment of all construction charges allocated to the Nebraska portion of said Fort Laramie Division shall be

completed. The District shall make promptly any and all repairs to the transferred works which in the opinion of the Secretary are deemed necessary for the proper care, operation and maintenance of the transferred works. If at any time, in the opinion of the Secretary any part of the transferred works shall from any cause be in a condition unfit for service, the Secretary may order the water turned out or shut off until in his opinion such works are put in proper condition for service. In cases of neglect or failure of the District to make such repairs the United States may, at the option of the Secretary, take back the care, operation and maintenance of the transferred works, or may cause the repairs to be made and charge the cost thereof to the District, which charge the District agrees to pay upon rendition of a statement therefor, within thirty days from the rendition of said statement. The District shall make, announce and collect sufficient operation and maintenance or toll charges to pay this charge to the United States in addition to providing the necessary funds to meet the other obligations of the District.

Penalties.

31. To any instalments of the construction charge or any operation and maintenance charges or any part thereof which may remain unpaid by the District to the United States after the same shall have become due, there shall be added at once a penalty of one-half of one per centum thereof, and thereafter a like penalty of one-half of one per centum on the first day of each month as long as such default shall continue; but it is understood that the penalties provided in this article apply to the payments to be made by the District to the United States, and that assessments levied by the District will be subject to the penalties and interest charges provided in the State law as applicable thereto.

Application of Net Profits from Power Plants, Grazing Leases and Town Sites.

32. Should any net profits be realized by the United

States from any of the various sources named in subsections I and J of said act of Congress of December 5, 1924, the same will be announced and determined each year by the Secretary in a written statement to be sent to the District. The portion of such net profit, if any, as determined by the Secretary, shall be credited each year as follows:

(a) On the annual installment of project construction charges of the District beginning with the installment first coming due and continuing with succeeding construction installments as far as such credit will go until the entire construction indebtedness of the District has been paid;

(b) Thereafter upon operation and maintenance charges as the same come due to the United States;

(c) As the District may direct;

but no distribution to individual water users shall be made out of any such profits until all obligations to the United States have been fully paid. The Secretary shall determine the proportion of net profits, if any, under said subsections I and J from other sources equitably to be credited to the District, as well as the amount of such net profit. The Decision of the Secretary shall be conclusive as to the amount of net profits derived under subsections I and J of said act and the equitable proportion thereof to which the District is entitled.

Turning Over Certain Equipment and Supplies.

33. At some suitable time prior to the first day of November, 1926, the United States will cause to be submitted to a meeting of the Board of Directors of the District a list of the equipment and supplies used in connection with the operation and maintenance of the transferred works which will no longer be needed by the United States after the transfer of said works, together with the book value thereof, the said book value being the cost thereof less estimated depreciation. Items on said list which the members of the said Board there

present, or a majority thereof, shall indicate that the Board does not desire to take over will be stricken from the list, and effective January 1, 1927 the items remaining on the list will be turned over to the District for use in the operation of the transferred works.

Rules and Regulations.

34. The Secretary reserves the right, so far as the purport thereof may be consistent with the provisions of this contract, to make rules and regulations and to add to and modify them as may be deemed proper and necessary to carry out the true intent and meaning of the law and of this contract.

Public Lands Subject to Assessment Under the Smith Act.

35. Pursuant to the provisions of Section 3 of the Act of May 15, 1922 (42 Stat. 541) all unentered public lands and entered lands for which no final certificate has been issued, located within the District and described in a list marked Exhibit A attached hereto and made a part hereof, are hereby designated as subject to the provisions of the Act of August 11, 1916 (39 Stat. 506); provided that unentered public land while in that status shall not be assessed by the District for any purpose.

Secretary to Approve Bond of Treasurer.

36. The Secretary shall approve the amount of the bond required to be furnished by the Treasurer of the District and no person shall be authorized to act as Treasurer or to handle any of the funds to be collected or disbursed by the District without furnishing a surety company bond in an amount approved by the Secretary for the faithful performance of the duties of his office.

Replacement of Delinquent Treasurer.

37. Should the Treasurer of the District fail or neglect to pay over promptly to the United States all construction or operation and maintenance charges so collected, the Secretary shall have authority to suspend

or terminate the authority of such Treasurer to make further collections or disbursements, and upon notice from the Secretary the District shall discharge such Treasurer and terminate his authority to act as Treasurer, and the Secretary may designate a Fiscal Agent of the United States to make such collections and disbursements, and to perform the duties of Treasurer of said District, as well as Fiscal Agent of the United States. In such event, such Treasurer shall have authority to perform all the acts which could be performed by a Treasurer selected by said District, but shall receive compensation only from the United States as its Fiscal Agent.

Responsibility for Holding the United States Harmless.

38. After the transfer of said transferred works, the District shall hold the United States, its officers and agents, harmless as to any and all damage which may in any manner grow out of any operation and maintenance of the transferred works by the District.

Release of Liens.

39. When the execution of this contract shall have been confirmed by a court of competent jurisdiction as herein provided, and the time for taking an appeal therefrom shall have expired or, if appeal be taken, confirmatory decree shall have been rendered, all liens in favor of the United States provided by the Reclamation Law and all liens reserved to the United States in patents which may have heretofore issued for lands embraced in the District, shall (subject to the provisions of Section 2 of the Act of Congress of May 15, 1922, (42 Stat. 541)) be released as to all lands within the District and the District obligations herein provided for shall be accepted by the United States in lieu thereof.

Such release shall be executed by the proper officers of the United States and will be delivered for record only when the provisions of this Article have been complied with and the provisions of Section 2 of the Act of Congress of May 15, 1922 (42 Stat. 541) have been fully met.

Inspection by the United States.

40. The Secretary shall cause a reasonable inspection of the transferred works to be made once each year and oftener in his discretion, to ascertain whether the terms of this contract are being satisfactorily executed by the District. Such inspection shall include examination of the transferred works and of all books, records and papers of the District, together with examinations in the office of the Bureau of Reclamation of all contracts, papers, plans, records and programs connected with the said property. The actual expense of such inspection as found by the Secretary shall be paid by the District to the United States as herein provided.

District to Keep Books and Records and Report Crop Returns.

41. In order that the United States may withdraw as completely as possible from the management of the transferred works, the District shall:

(a) Install and maintain a modern set of books to be acceptable to the Secretary, showing all financial transactions of the District and furnish such financial reports and statements as may be required from time to time by the Secretary;

(b) Keep an accurate record of all crops raised and agricultural or livestock products produced on the Nebraska portion of said Fort Laramie Division and furnish to the Secretary on or before December 31 of each year, a crop report in form prescribed by the Secretary;

(c) Keep each year a careful and accurate record of the water supply of the Nebraska portion of the said Fort Laramie Division and the distribution of the same and furnish such detailed reports concerning the same as may be required by the Secretary;

(d) Keep and report such other records as the Secretary may require and in the manner and form he may require.

Crop Census.

42. The Secretary shall have authority from time to time when he shall determine it necessary or desirable to do so, but not oftener than once a year, to cause a crop census to be taken and an investigation to be made of the acre income of the lands of the District, or so much thereof as he deems necessary or desirable for the purpose of checking the records furnished by the District or securing independent information concerning the crops and income produced on the lands of the District. The Secretary may require such information to be given under oath and the District will refuse water to any owner or occupant of land who shall refuse to give under oath such information concerning crop production and income when requested to do so by the crop census-taker appointed by the Secretary. A statement of the cost of such crop census and investigation will be furnished to the District and the cost thereof as shown by said statement will be paid by the District to the United States in the same manner and at the same time as the cost of the operation and maintenance of the retained works.

Access to Books and Records.

43. The proper officers or agents of the District shall have full and free access at all reasonable times to the project books and official records of the United States relating to the construction, acquisition, care, operation and maintenance of the Nebraska portion of said Fort Laramie Division and of the reserved works and the status to the District accounts and payments of operation and maintenance and all construction charges with the right at any time during the office hours to make copies of or from the same, or any of them, and the proper representative of the United States shall have similar rights in respect to the books and records of the District.

Competent Superintendence Required.

44. Until payment to the United States of all charges

allocated to the Nebraska portion of said Fort Laramie Division, except the operation and maintenance of the reserved works, the District shall employ as manager a competent irrigation manager who shall have had experience as manager in the operation of similar irrigation works. The selection of such person shall be subject to the approval of the Secretary; and upon notice from the Secretary that such manager is or has become unsatisfactory, the District shall promptly and as often as such notice is given, terminate the employment of such unsatisfactory employee and employ one acceptable to the Secretary.

Contract May be Terminated in Case of Breach on One Year's Notice.

45. In case of breach of any of the terms and conditions of this contract by the District, the United States reserves the right upon one year's written notice to the District to terminate this contract; and upon the termination thereof the transferred property shall be returned to the United States in as good condition as when received, reasonable wear and damage by the elements excepted; provided, however, that such return of the transferred property shall not affect the amount and terms of construction charges as herein provided.

District to Benefit by Future Legislation.

46. Should Congress enact legislation permitting the District to meet its obligation to the United States under more favorable terms, or reducing the indebtedness due from the District to the United States or providing any other terms or benefits acceptable to the District, nothing contained in this contract shall prevent the District from receiving the benefit of such legislation.

Interest in Contract Not Transferable.

47. No interest in this agreement is transferable by the District to any other party and any such attempted transfer shall subject this contract to cancellation at the option of the United States. All rights of action

for breach of this contract are reserved to the United States as provided in Section 3737 of the Revised Statutes of the United States.

Contract to be Authorized by Election and Confirmed by Court.

48. The execution of this contract by the District shall be authorized by the qualified electors of the District at an election held for that purpose. After the execution of the contract the District shall, without delay, prosecute to decree proceedings in court for the judicial confirmation of the authorization of the execution and the execution of this contract. The United States shall not in any way be bound to proceed under the terms of this contract until a confirmatory final decree in such proceedings shall have been rendered, including final decision on any appeal prosecuted therefrom. The District shall furnish the United States for its files certified copies of all proceedings relating to the election upon this contract and the confirmation proceedings in connection therewith.

Congressional Appropriation Clause.

49. This contract is subject to appropriation by Congress, from year to year, of funds sufficient to carry on the work and no liability shall accrue against the United States in case such funds are not apropriated by Congress.

Member of Congress Clause.

50. No member of or Delegate to Congress or Resident Commissioner, shall be admitted to any share or part of this contract or to any benefit to arise thereupon. Nothing, however, herein contained shall be construed to extend to any incorporated company, if the contract be for the general benefit of such corporation or company.

In Witness Whereof, the parties hereto have hereunto set their names the day and year first above written.

UNITED STATES OF AMERICA
By .....
GERING & FT. LARAMIE
IRRIGATION DISTRICT
By .....
Chairman of the Board
.....
.....
.....
.....
.....
Directors

Attest:
.....
Secretary of the Board

Notice is hereby given that the polling place in Division Number 1 is school house, District Number 12, situated on the South-East Quarter of Section 20, Township 21, North, Range 56, located in said Division Number 1. The polling place in Division Number 2 is the residence of Bert Scott situated on the North-East Quarter of Section 18, Township 22, North, Range 56, located in said Division Number 2. That the polling place in Division Number 3 is the Community Hall situated in the village of Lyman, Nebraska and located in said Division Number 3. That the clerks and judges of each of said divisions have been designated as follows: Division Number 1; Clerk, Ancil Gregory; Judges, T. M. Rogers and Will Hampton; Division Number 2; Clerk, Ivan Pickerall; Judges, T. H. Polk and Harry McClanahan; Division Number 3: Clerk, William Ghert; Judges, Zed Goodwin and Charles Foster.

In Witness Whereof, the officers and Board of Directors have hereunto set their hands this 5th day of Oc-

tober, 1926 and caused the corporate seal of said District to be attached hereto.

THE GERING & FORT LARAMIE
IRRIGATION DISTRICT
By H. YENSEN
Chairman of the Board
A. N. MATHERS
JOHN H. KELLUMS
(Seal) BERT SCOTT
H. M. SPRINGER
H. YENSEN
Board of Directors of the
Gering & Fort Laramie
Irrigation District.

Attest:
NILES E. OLSEN
Secretary of the Board.

Nebraska Exhibit 567

NEBRASKA EXHIBIT 570.

CONTRACT.

Between the United States of America and Pathfinder Irrigation District, State of Nebraska, July 31, 1926.

Department of the Interior, Bureau of Reclamation, North Platte Project, Nebraska.

CONTRACT BETWEEN THE UNITED STATES OF AMERICA AND THE PATHFINDER IRRIGATION DISTRICT, PROVIDING FOR THE TRANSFER OF OPERATION AND MAINTENANCE OF CANAL SYSTEM TO THE WATER USERS, AND APPLICATION OF TERMS OF FACT FINDERS' ACT OF DECEMBER 5, 1924.

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United States Department of the Interior
Bureau of Reclamation.

This Agreement, made this 31st day of July, 1926, between the United States of America, herein called the United States, acting for this purpose by E. C. Finney, First Assistant, Secretary of the Interior, herein called the Secretary, under the provisions of the Act of Congress of June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, and particularly under the provisions of Section 4 of the Act of Congress of December 5, 1924 (43 Stat. 672, 701), all referred to as the Reclamation Law, and the Pathfinder Irrigation District, an irrigation district organized under the laws of the State of Nebraska and located in the counties of Sioux, Scotts Bluff and Morrill in the State of Nebraska, herein called the District.

Witnesseth that:

EXPLANATORY RECITALS.

Classes of Land in the District.

2. Whereas, the District includes within its boundaries about 111,000 acres of irrigable lands which receive their water supply from the irrigation works constructed by the United States for the Interstate Division of the North Platte project, of which area of approximately 111,000 acres approximately 106,000 acres are covered by water right applications (and are hereinafter referred to as application land) and approximately 5,000 acres of irrigable land are not now covered by water-right applications (and are hereinafter referred to as non-application land). The owners of application land are hereinafter referred to as application landowners, and the owners of non-application land as non-application landowners. Application landowners who (by the execution of the form attached hereto as Exhibit (A) (1) agree to abrogate their water-right application, and (2) accept the terms of this contract, are hereinafter referred to as consenting application landowners.

Concerning Previous Contracts.

3. Whereas, under Public Notices issued by the Secretary applicable to said Interstate Division of the North Platte project the various entrymen and owners of application land have filed water-right applications in form approved by the Secretary, which have been duly accepted and approved on behalf of the United States and constitute the contracts between such landowners and entrymen and the United States.

Landowners Desire Benefits of Act of December 5, 1924.

4. Whereas, the District desires to secure the benefits of Section 4 of said Act of Congress approved December 5, 1924, and to take over the operation and maintenance of the canal system and other irrigation works as described in Article 34 (hereinafter referred to as the transferred works) of the said Interstate Division of the North Platte project.

Now, Therefore, in consideration of the premises, it is hereby agreed as follows:

District Assumes Payment of Construction Charges.

5. The District assumes and agrees to pay in the manner hereinafter stated, to the United States, construction charges as follows:

(Item 1) The total, as of the date this contract becomes effective, of the unpaid construction indebtedness (including interest and penalties, as determined by the Secretary) to the United States, of all the consenting application landowners, as defined in Article 2 hereof; (Item 2) the amounts of operation and maintenance charges (including interest and penalties) funded upon consenting application land under Subsection L of said Act of Congress of December 5, 1924; (Item 3) the consenting application landowners' ratable proportion of the book value of equip-

ment and supplies transferred under Article 30 of this contract; (Item 4) the total of the unpaid construction indebtedness, including interest and penalties, of all the non-consenting application landowners (as defined in Article 2 hereof), said total construction indebtedness to be determined from the North Platte project books, the individual water-right applications covering such non-consenting application landowners and the public notices applicable thereto, and (Item 5) the construction charges at the rate of $71.00 per acre upon the irrigable acreage of non-application land (as determined by the Secretary). In case of dispute as to the amount of any of the foregoing items, the matter will be determined by the Secretary, whose decision will be final and binding upon both parties. The District is to assume a primary obligation to make payment of Item 4 only if the non-consenting application landowners fail or refuse to make payment of the amount thereof. The payment of construction charges (being the total of Items 1 to 5, both inclusive, of Subdivision A of this Article) by the District to the United States shall continue until the said construction indebtedness hereby assumed and agreed to be paid has been fully met.

District to Collect from Non-Consenting Lands and Act as Fiscal Agent of the United States.

6. The District will act as Fiscal Agent of the United States for the collection of charges hereafter due the United States from (1) the non-consenting application landowners, (2) landowners having land under water-right application in the said Interstate Division, but not included within the limits of the District, whether such land lies in the State of Nebraska or the State of Wyoming, (3) the Lingle Water Users' Association under contracts between that Association and the United States dated March 9, 1917, May 10, 1922, and May 15, 1924, and (4) the Pleasant Valley Lateral Association under contracts dated June 16, 1915, December 18, 1915, and February 23, 1920. The District will collect such charges on or before the date when the same are due under terms of applicable con-

tracts or water-right applications and Public Notices, and will pay same over to the United States within thirty (30) days after same are collected, together with (a) the penalties prescribed in the case of water-right application by Subsection H of Section 4 of said Act of December 5, 1924, and (b) the interest or penalties prescribed by the applicable contract in collections from said two Associations. The District will use all means in its power to collect such charges from the parties named, including the withholding of water, where the withholding of water is permissible under the law or under the contracts with the United States, the District being hereby constituted by the United States the assignee of any power possessed by the United States to withhold the delivery of water to enforce the collection of charges. From any operation and maintenance charges collected by the District as Fiscal Agent of the United States and turned over to the United States, the Secretary of the Interior will refund the portion thereof which in his judgment is payable to the District by reason of the District having operated and maintained the transferred works for the benefit of the water-right applicant or contractor from whom the collection was made.

Annual Construction Payment by District to United States On Basis of Average Gross Acre Income.

7. In addition to the payments provided for in Article 6, the District will pay to the United States each year a construction charge which will be determined by multiplying the average rate per acre (as announced by the Secretary) by the total number of irrigable acres of (1) consenting application lands, and (2) non-application lands subject to construction charges, as the said total number of acres is determined and announced annually by the Secretary: Provided, however, that when the total of the amounts due on behalf of consenting application and non-application land is reduced by previous payments or less than a full installment on the foregoing basis, the amount then due will be announced to the District by the Secretary; And Provided, further, that the area upon which the District is to assess construction charges during the

year 1926 is hereby fixed as 85,000 acres of irrigable land, less the area of water-right application land from which under this contract the District is to collect as Fiscal Agent of the United States construction charges coming due to the United States during the year 1926.

The average rate per acre to be used in determining the annual construction payment to be made to the United States by the District under this article will be five (5%) percent of the average gross annual acre income (as conclusively determined by the Secretary) of the area, as conclusively determined by the Secretary annually, of (1) irrigable consenting application land and (2) irrigable non-application land in cultivation in the District for the ten (10) calendar years first preceding the year in which such announcement is made by the Secretary. For the purpose of determining the annual construction payment to be made by the District to the United States under this Article, all the irrigable consenting application and non-application lands are considered to be in one class, but it is agreed that the District, if it so desires, may classify the said land and upon the approval of such classification by the Secretary may collect annual construction assessments at different rates per irrigable acre from said lands of the various classes, but the annual construction payments to be made by the District to the United States under this Article will not be changed by such classification. Should the District decide to make the land classification provided for herein, it may have the use of the Government records in regard to land classification, and also the Government records in regard to crop returns from the various farm units in determining the proper rate of construction assessment applicable to each class of land.

The Secretary in announcing to the District the total number of irrigable acres upon which construction charges are to be collected under this Article will omit any acreage which at tax sale on account of, among other charges delinquent assessments made by the District to carry out this contract, has failed to sell for a price sufficient to pay the taxes, including penalties, etc., due thereon, and

said acreage shall not thereafter for a period of three years be included in said total number of irrigable acres, or for such longer period than three years as to the Secretary may appear advisable; Provided, however, that this provision is not to be reduced below 80,000 acres the total acreage upon which construction charges are to be assessed under this Article.

The Secretary in announcing to the District the total number of irrigable acres upon which construction charges are to be collected under this Article will also omit any acreage upon which the construction charges, as herein adjusted, shall have been paid in full. The District will assist the Secretary in obtaining the acreage of such paid-up land by (1) keeping accurate records of the construction payments made upon each tract of consenting application land and (2) by furnishing upon request of the United States copies of such records to the Secretary each year in advance of the date when the Secretary's said annual announcement is to be made to the District.

District to Increase Assessments to Cover Tax Sale Deficiencies.

8. The total sums due each year from the District to the United States (exclusive of the amounts which the District is to collect as Fiscal Agent of the United States) are general obligations of the District and the District will each year levy assessments sufficient to pay the same in full to the United States, together with any deficiencies established by tax sales as hereinafter provided. The District, within two months after November 1st following May 1st upon which any such taxes shall become delinquent, will, the taxes still remaining unpaid, either purchase said lands at tax sale, or (if the lands have within said period of two months been purchased by the County) purchase the tax certificate or certificates held by the County. Immediately after a period of two years shall have elapsed subsequent to the date of the tax sale certificate held by the District, the District will give notice provided by Sections 6070 and 6071 of the Compiled Statutes of Nebraska, 1922, and at the earliest prac-

ticable date thereafter, will call for a County Treasurer's deed. The District will not during the period when it holds a tax sale certificate or a tax deed covering any land, permit such land again to be sold for taxes. As soon as the District shall have received a tax deed, it will immediately proceed to foreclose the tax lien under Section 6088, except where an interest in the land is held by minors, idiots, or insane persons, in which case suit to foreclose the tax lien shall be instituted at the earliest possible date after such minor's, idiot's or insane person's rights of redemption shall have expired under Section 6068 of the Compiled Statutes of Nebraska, 1922. If at the foreclosure sale the net amount realized is insufficient to pay the charges due the United States hereunder, the amount of the deficit arising from such foreclosure sale shall be reported by the District to the United States, and the District in the next assessment levied thereafter will include an additional levy to meet such deficiencies. Provided, however, that no water shall be delivered by the United States to the District when the District is more than twelve months delinquent in the payment of any construction or operation and maintenance instalment which the District has herein agreed to pay from assessments levied upon District land. If the laws of Nebraska should be amended so as to make the provisions of this Article relative to the enforcement of tax liens inapplicable, the District will nevertheless abide by the intent of this Article, which is that the District shall proceed with all possible dispatch to foreclose such tax liens and to establish without avoidable delay the amount of any deficiency to result from the failure of land sold at tax foreclosure sale to realize the sums due the United States from the District on behalf of such land.

Terms of Payment Modified as Authorized by New Law.

9. The said construction charges herein assumed and agreed to be paid by the District on behalf of consenting application lands will be accepted in lieu of the construction charges provided for in the individual water-

right applications covering such land, but non-consenting application landowners will remain subject to the terms and conditions contained in their existing water-right applications and contracts. The decision of the Secretary as to the amount of any installment due and as to the date same is due shall be conclusive.

Release of Individual Liens Provided in Water Right Application or Reserved in Patents.

10. After the confirmation of the apportionment of charges hereunder the lien of the individual water right applications heretofore made, and also the liens reserved in the patents, shall (subject to the provisions of Section 2 of the Act of Congress of May 15, 1922 (42 Stat. 541) be released as to all consenting application lands and such consenting application landowners shall be released from the obligations of the individual water right applications theretofore assumed by them or their predecessors in interest, and the District obligations herein provided for accepted in lieu thereof. The United States will also consent to the release of any liens upon consenting application lands provided under stock subscription contracts to the North Platte Valley Water Users' Association. After the confirmation of the apportionment of charges hereunder by the Court, formal release of such liens on consenting application lands, approved by the Secretary will, subject to the provisions of Section 2 of said Act of Congress of May 15, 1922, be filed for record in the office of the County Recorder of the respective counties in which such lands are located.

Future Announcements Affecting Construction Payments.

11. After the close of each year hereafter the Secretary will notify the District in writing of his findings in regard to the average gross annual acre income for the irrigable consenting application and non-application lands in cultivation in the District for that year, and the average for the ten (10) year period, including such year and each preceding year within such period unless the Secre-

tary shall find the average gross acre income for such year to be so near the average last determined as to make no material difference in the rate previously determined, in which event the rate last determined and stated by the Secretary shall continue. The failure of the Secretary to state his findings in regard to the average gross acre income for any future year will be construed as equivalent to a finding by him that the average gross acre income for such year is the same as for the last preceding ten (10) year period, and that the rate last stated will continue.

Annual Construction Charges Payable June 1.

12. The first annnal construction charge to be paid by the District to the United States under Article 7 hereof will come due on June 1, 1927, and one annual installment on June 1 of each year thereafter.

Penalty and Interest Reduced.

13. The penalty of one percentum (1%) per month against delinquent accounts provided in Sections 3 and 6 of the Act of Congress of August 15, 1914 (38 Stat. 686), is hereby reduced to one-half of one percent (½%) per month as to all installments coming due from the District to the United States on behalf of application and non-application land and in connection with collections made by the District as Fiscal Agent of the United States, from non-district land under water right application which penalty shall be in lieu of the penalty of one percent (1%) per month provided in said Sections 3 and 6 of said Act of Congress of August 13, 1914, but it is understood that the penalties provided in this Article apply to the payments to be made by the District to the United States and that assessments levied by the District will be subject to the penalties and interest charges provided in the State Law as applicable thereto.

Delinquent Charges and Cost of Transferred Equipment Added to Construction.

14. All construction and all operation and maintenance charges due and unpaid from the consenting ap-

plication landowners to the United States at the date of this contract, including (a) charges upon consenting application land the dates for payment of which were deferred under the Act of May 9, 1924 (43 Stat. 116) and which are now due and unpaid (and for the purpose of this contract all charges deferred under said Act are hereby declared due so far as they affect consenting application landowners); (b) other due and unpaid construction and operation and maintenance charges (including such charges for 1924 and 1925) applicable to consenting application land, together with all interest and penalties; (c) the consenting application landowners' proportion (as conclusively determined by the Secretary) of the cost incurred by the United States in operation and maintenance work for the Interstate Division of the North Platte Project during the calendar year 1926, prior to July 1, 1926; (d) the consenting application landowners' proportionate part as conclusively determined by the Secretary of maintenance expenditures for the Interstate Division incurred by the United States after July 1, 1926, under contracts entered into prior to June 1, 1926, and (e) the consenting application lands' pro rata share of the book value of the equipment turned over to the District under Article 38 hereof, shall be added to the total unaccrued and unpaid construction apportionment against the land of each consenting landowner and the sum of such new total so established shall be the gross construction charges payable by the District on behalf of the consenting application lands. In the operation and maintenance assessment levied by the District during 1926 or toll charge collected by the District under this contract in 1927, there shall be included an assessment or toll charge (a) upon non-consenting application lands adequate to raise funds to pay the United States such lands' pro rata portion (as determined by the Secretary) of the book value of the equipment turned over to the District under Article 38 hereof, and (b) upon all land subject to such assessment or toll charge adequate to raise funds to pay the United States in advance such lands' estimated proportion of the operation and maintenance charges on account of the oper-

ation and maintenance by the United States of the reserved works during the year 1927, as provided in Article 18.

Total Construction Charges Against Individual Tracts.

15. Annual construction assessments shall be levied against each tract of consenting application land until the full construction charge apportioned to such tract has been paid notwithstanding that other tracts of consenting application lands may be sooner paid out and construction assessments (except for assessments to meet deficiencies as provided in Article 8) discontinued as to such other lands. Provided, however, that the District subject to the provisions of Article 8 is to pay the United States the amounts above agreed upon irrespective of the defaults of individual landowners in meeting their assessments. The District shall increase its levy each year in order to obtain a sum sufficient to meet the deficiencies of past years, as defined in Article 8. Such increase may be levied upon consenting application lands and upon non-application lands, although the construction charges apportioned thereon have been fully paid, and the sum paid by the owners of consenting application and of non-application lands to make up the deficiency due to the failure of others to make payments shall not be considered as payment on the construction charges apportioned against said lands, but after the owner of any such tract of land has fully paid the amount of the construction charges apportioned thereto as provided hereunder, such tract of land shall thereafter be subject to construction assessments only when the District is delinquent in its construction payments to the United States to the extent necessary to meet its pro rata share of such delinquency.

Objecting Landowner May Remain Subject to Present Terms.

16. Any landowner not consenting in the manner provided in Article 2 to such readjustment of construction charges against his lands in the District will have his lands continued upon the basis of the terms of existing

contracts as embodied in the accepted water right applications or other contracts applicable to such tracts of land and Public Notices applicable thereto, but in that event such land shall continue subject to the terms of payment provided in such contracts, water right applications, and Public Notices, shall not be entitled to any of the benefits of this contract, and the lien of none of the delinquent charges against such non-consenting lands shall be released: nor shall any lien applicable thereto under the patent or water right application be released.

All Benefits Conditional Upon Payment.

17. Should any assessment, or assessments, authorized by the terms of this agreement and levied against any tract of land in the District, be held irregular or void, or the District, or its officers be enjoined or restrained from making or collecting any assessments provided for herein from any tract of land in the District, at the instance of the owner or holder of such tract of land, then each tract shall have no right to any of the benefits . this contract and shall immediately revert to the obligations and terms of payment provided for in the individual water right application contracts and the Public Notices under which such water right applications were made, and no water furnished through any works constructed by the United States shall be delivered to or for such tract or tracts of land until the construction and operation and maintenance charges at the rates and upon the terms and conditions provided in such water right applications and the Public Notices applicable thereto shall have been paid by the landowner to the District and by the District to the United States, to the same extent that would have been required had this contract never been made. The District is hereby authorized to collect from such lands, as Fiscal Agent of the United States, and shall promptly pay over all such construction collections to the United States . . . and the Secretary hereby announces and gives public notice with reference to such lands that the operation and maintenance charges hereafter applicable thereto shall be the same as those

applicable to other lands of the same class which become subject to the terms of the contract, and payment of the operation and maintenance charges from such lands shall likewise be required in advance as a toll charge as a condition to the delivery of water in like manner as in the case of other lands in the District. It is further agreed and understood that the payment of construction and operation and maintenance charges at the rates and upon the terms and conditions provided for herein as to lands subject to this contract, and at the rates and upon the terms and conditions provided in the water right applications and Public Notices applicable thereto, and contract applicable thereto as to lands which revert to or remain subject to such applications and contracts is a prerequisite to the right to receive water from any of the works constructed by the United States, and no irregularity in levying assessments by the District, or lack of authority in the District whether affecting the validity of District assessments or not, shall be of any effect to authorize any landowner of the District to demand or receive water made available through irrigation works constructed by the United States unless construction and operation and maintenance charges at the rates and upon the terms and conditions provided herein have been paid by such landowner.

1927 Operation and Maintenance During First Year.

18. The District's proportion of the estimated cost of operation and maintenance during the year 1927 applicable to all lands subject to District assessments or to the collection of toll charges on account of (a) operation and maintenance of the reserved works by the United States during the year 1927, and (b) the distribution of store water and natural flow from the North Platte river will be estimated by the Secretary and announced to the District as provided in Article 42. Non-consenting application landowners will be required to pay their proportionate part of the book value of equipment and supplies transferred as provided in Article 58, as a portion of the 1927 operation and maintenance charges, and public

notice to that effect is hereby given. Pursuant to the provisions of Subsection N, Section 4 of said Act of Congress of December 5, 1924, the funds necessary for the operation and maintenance of the transferred works during the year 1927 will be collected in advance and water will not be delivered until such charges are paid. After the end of the year 1927 the Secretary will cause a statement to be furnished to the District showing the actual cost during said year 1927 of the operation and maintenance of the works reserved by the United States, and the District's proportionate share thereof, and the actual cost of the distribution and protection of stored water run in the North Platte river, including all the items of cost and expense herein enumerated and the District's proportionate share thereof, and thereafter the charges against the District on account of said operation and maintenance during the year 1927 will be readjusted to conform to the said statement of actual cost, instead of said advance estimate of cost, by making or allowing a suitable debit or credit against or in favor of the District, as the case may be, which credit or debit will be deducted from or added to the amount which would otherwise be payable by the District to the United States the following year.

Carrying Out Obligations of Contracts.

19. The District, shall carry out, in accordance with their correct intent and meaning, and to the satisfaction of the Secretary, all project contracts of whatsoever kind or nature now in force (or hereafter in force, provided any such new contracts or any modifications of existing contracts are acceptable to the District Board, as shown by a resolution of the Board duly adopted) affecting the transferred property in any manner and shall fulfill all obligations imposed upon the United States therein. No contract affecting the project made by the District, except for the usual labor, equipment, supplies and services in connection with the operation and maintenance of the transferred works, and the delivery and distribution of water, shall be valid until approved by the Secretary,

and a draft of such contract shall be submitted to the Secretary for approval as to form before execution.

Secretary to Approve Bond of Treasurer.

20. The Secretary shall approve the amount of the bond required to be furnished by the Treasurer of the District and no person shall be authorized to act as Treasurer or to handle any of the funds to be collected or disbursed by the District without furnishing a surety company bond in an amount approved by the Secretary for the faithful performance of the duties of his office.

Amounts Due the United States a First Charge Upon Collections.

21. The amounts due the United States from the District for the operation and maintenance of the works reserved to the United States shall be first charge upon the operation and maintenance collections of the District.

To Use All Powers to Collect Agreed Charges.

22. The District agrees that it will cause to be levied and collected all necessary assessments and will use all the powers and resources of the District, including the taxing power of the District and the power to withhold delivery of water, to collect and pay to the United States all charges provided for in this contract in full on or before the day that the same become due.

Agreed Charges a General Obligation of the District.

23. The District is obligated to pay to the United States as provided in Article 8, the full amounts herein agreed upon according to the terms stated regardless of individual default in the payment of any assessment levied by the District, but it is understood and agreed that when construction assessments on any tract of consenting application land have been paid in an aggregate amount equal to the full amount of the construction charges applicable to each tract, including all the items mentioned in Article 5 hereof, such tract of land hereinafter referred to as paid-up land, shall thereafter be

liable for construction assessments for the purpose of meeting the obligations of the District under this contract, only to the extent that assessments are levied to meet delinquencies (as defined in Article 8) in the payment of charges and may be assessed at a lesser rate than the rate applicable to lands of similar class which are not paid up, if such lesser rate, together with District's other collections, will suffice to meet the District's obligations to the United States, and in the event of such delinquencies on the part of the District and/or the collection of construction assessments from such paid up lands, it shall be the duty of the District to refund to the owners of such paid-up lands the construction assessments collected therefrom in excess of the total construction charges applicable thereto, or so much of such excess as can be paid out of the funds available in the Treasury of the District and not required to pay the District's obligations to the United States, or the District's share of the cost of the operation and maintenance of the transferred works, and the maintenance of the District organization.

No Water to be Delivered Without Payment.

24. Pursuant to the provisions of Section 6 of the Act of Congress of August 13, 1914 (38 Stat. 686), no water shall be delivered to or for any tract of land in the District the owners or holders of which shall be in arrears more than one year for the payment of any charge for operation and maintenance or any annual construction charge and penalties, or any assessment levied by the District for the purpose of paying such construction, or operation and maintenance charges, or who after the beginning of the year 1927 shall fail to pay in advance the annual operation and maintenance charges.

Statement of Status of Payments Affecting Right to Water.

25. The District will furnish the United States a list of lands in the District which are entitled to receive water under the terms of the preceding Article, which

list shall be amended or supplemented from time to time after changes occur in regard to the status of said lands as to the qualifications to receive water, which list shall be available for the use of the United States in reducing the amount of water turned in at the head of the transferred works in proportion to the lands under said transferred works, which on account of delinquency in payment are not entitled to receive water. Water so withheld may be used by the District provided the District is not delinquent in the payment of any charges due the United States hereunder, upon other land in the District, upon which the charges are paid. Should the Treasurer of the District at any time when the District has collected and has available in the hands of the Treasurer sufficient funds to make such payments fail to pay promptly to the United States the construction or operation and maintenance charges herein agreed to be paid by the District, the District will, upon notice from the Secretary and as often as such notice is given, discharge such Treasurer and terminate his authority to act as Treasurer of the District and select another treasurer satisfactory to the Secretary to perform such duties.

Responsibility for Holding the United States Harmless.

26. After the transfer of said transferred works, the District shall hold the United States, its officers and agents, harmless as to any and all damage which may in any manner grow out of any operation and maintenance of the transferred works.

Rules and Regulations.

27. The Secretary reserves the right, so far as the purport thereof may be consistent with the provisions of this contract, to make rules and regulations and to add to and modify them as may be deemed proper and necessary to carry out the true intent and meaning of the law and of this contract.

Public Land Subject to Assesment Under the Smith Act.

28. Pursuant to the provisions of Section 3 of the Act of Congress of May 15, 1922 (42 Stat. 541) all un-

entered public lands and entered lands for which no final certificate has been issued, located within the District, and described in a list Marked Exhibit B, attached hereto and made a part hereof, are hereby designated as subject to the provisions of the Act of Congress of August 11, 1916 (39 Stat. 506).

Contract to be Authorized by Election and Confirmed by Court.

29. The execution of this contract shall be authorized by the qualified electors of the District at an election held for that purpose. Thereafter, without delay, the District shall prosecute to decree proceedings in court for the judicial confirmation of the authorization of this contract. The United States shall not be in any way bound to proceed under the terms of this contract until the confirmatory final judgment in such proceedings shall have been rendered, including final decision on any appeal prosecuted therefrom. The District shall furnish the United States for its files certified copies of all proceedings relating to the election upon this contract and the confirmation proceedings in connection therewith.

Claims and Complaints of Incorrect Distribution of Water.

30. The United States and its agents in charge of the reserved works will use their best efforts and best judgment to deliver and turn out for the several parties entitled to receive water from said works their correct and proper share of the water actually available therefrom, and should the District, or any of the landowners or water users of the District feel aggrieved on account of any alleged shortage in the water supply delivered by the United States hereunder, or on account of any alleged mistakes or inaccuracies in the division of the water among the parties entitled to receive water from said reserved works, such party shall at once report to the officer of the United States in charge of said reserved works such alleged shortage or error in the division or delivery of water, and such officer shall promptly in-

vestigate any such complaint and if he finds that the proper proportion to share of the available water supply to which such party is entitled is not being delivered for such party, he will correct the delivery in so far as the United States has control of such delivery and distribution, so that the correct proportionate share as nearly as practicable to which such party is entitled will be delivered to or for such party at the point of delivery herein provided. If any such party is dissatisfied with the decision of such officer of the United States in charge of the reserved works, such party may apply to the Secretary for an order for the correction of an alleged error in the delivery or division of water from said reserved works but neither the United States nor its officers or agents shall be liable in damages on account of any such alleged shortage or mistake in the delivery or division of the water from said reserved works.

Distribution of Stored Water from North Platte River by State Officer.

31. The distribution of stored water from the Pathfinder Reservoir constructed by the United States on the North Platte river after the same is turned out of said reservoir into the river, will be in charge of the proper state officers or other officers charged by law with the distribution of stored water from North Platte river, and with the regulation of headgates for such purpose.

Profits Under Subsections I and J of the Act of December 5, 1924.

32. Should any net profits be realized by the United States from the Lingle or Guernsey power plant or from power developed at said plants, or from drops on any of the canals included among the transferred works herein described, or from any of the various sources named in Subsections I and J of said act of Congress of December 5, 1924, the same will be announced and determined each year by the Secretary in a written statement to be sent to the District over the signature of the Secretary. The portion of such net profit, if any, as

determined by the Secretary and set out in such annual statement as applicable to the District, shall be credited each year as follows:

(a) On the annual installment of project construction charges (including the construction charges payable by non-consenting application landowners) of the District beginning with the installment first coming due and continuing with succeeding construction installments as far as such credit will go until the entire construction indebtedness of the District has been paid;

(b) Thereafter upon operation and maintenance charges (including operation and maintenance charges on non-consenting application land) as the same come due to the United States:

(c) As the District may direct: but no distribution to individual water users shall be made out of any such profits until all obligations to the United States have been fully paid. The Secretary shall determine the proportion of net profits, if any, under said subsections I and J from other sources equitably to be credited to the District, as well as the amount of such net profit. The decision of the Secretary shall be conclusive as to the amount of net profits derived under Subsections I and J of said act and the equitable proportion thereof to which the District is entitled.

Lands Brought in by Petition.

33. Lands hereafter brought into the District by petition, and consenting to the terms hereof either by express provision of such petition signed by the owners of such lands, or by agreement in the form shown as Exhibit A, shall be entitled to the same terms of payment and other benefits of this contract applicable to similar lands already in the District, and shall likewise be subject to the same obligations and conditions applicable to similar lands already in the District.

Operation and Maintenance Transferred.

34. Effective July 31st, 1926, there is hereby trans-

ferred to the District the care, operation and maintenance of the portion of the Interstate canal of the North Platte project extending from Station 2 to the eastern terminus of the canal in Nebraska, together with (a) all lateral distributaries, drainage channels, dams, dikes, protective works and structures constructed for the benefit of the Interstate Division of the North Platte project and (b) all buildings used for operation purposes in connection with said Interstate Division, except those reserved to the United States as stated in Article 42. This transfer is made subject to the terms of all existing contracts. No title to any of the irrigation or drainage works passes. The irrigation and drainage works so turned over are referred to herein as the transferred works. The works, the operation and maintenance of which is retained by the United States, are herein referred to as the reserved works.

May Require Advance Payment as Toll Charge.

35. The District is authorized to require payment of operation and maintenance charges (including the charges due the United States for the operation and maintenance of the reserved works) in advance as a toll charge and to withhold delivery of water until payment thereof is made.

Operation and Maintenance Charges to be Uniform.

36. The said operation and maintenance charges will be uniform per irrigable acre, as to all lands using similar amounts of water, and each irrigable acre of said project for which the required payments have been made shall be entitled to the delivery of the same share of the available water supply of the said Interstate Division to which it would be entitled under the various contracts applicable thereto if the United States continued to operate and maintain the transferred works.

District Accepts Care, Operation and Maintenance.

37. The District hereby accepts the care, operation and maintenance of the transferred works, and will care

for, operate and maintain same and deliver water therefrom in full compliance with the said Reclamation Laws as they now exist or may hereafter be amended, the regulations of the Secretary now and hereafter made thereunder, and the terms of this contract and any other contracts in force affecting the transferred works in such manner that said works shall remain in as good and efficient condition and of equal capacity for the storage, development, diversion and distribution of irrigation waters as is now the case, and will use all proper methods to secure the economical and beneficial use of irrigation water the said operation, maintenance, and control of said transferred works to be without expense to the United States.

Turning Over Certain Equipment and Supplies.

38. At some suitable time prior to the adjustment of construction charges provided for in Article 14 hereof, the United States will cause to be submitted to a meeting of the Board of Directors of the District, a list of the equipment and supplies used in connection with the operation and maintenance of the transferred works which will no longer be needed by the United States after the transfer of said works, together with the book value thereof, the said book value being the cost thereof less estimated depreciation. Items on said list which the members of the said Board there present, or a majority thereof, shall indicate that the Board does not desire to take over, will be stricken from the list, and effective July 31st, 1926, the items remaining on the list will be turned over to the District for use in the operation of the transferred works.

Keeping Transferred Works in Repair.

39. No substantial change in any of the transferred works shall be made by the District without first obtaining the written consent of the Secretary. The District shall make promptly any and all repairs to the transferred works which in the opinion of the Secretary are deemed necessary for the proper care, operation and

maintenance of the transferred works. If at any time in the opinion of the Secretary any part of the transferred property shall from any cause be in a condition unfit for service, he may order the water turned out and shut off until in his opinion such property is put into proper condition for service. In case of neglect or failure of the said District to make such repairs, the United States may, at the option of the Secretary, take back the care, operation and maintenance of the transferred works, or may cause the repairs to be made and charge the cost thereof to the District, which charge the District shall promptly pay. The District shall make, announce and collect sufficient operation and maintenance or toll charges to promptly pay the same to the United States in addition to providing the necessary funds to meet the other obligations of said District.

Operation and Maintenance Payable in Advance.

40. The estimated operation and maintenance charge applicable to each tract of land receiving water through the transferred works will be collected in advance, and water will not be delivered until such charge has been paid. In order to conform as closely as possible, both to the provisions of Section 5 of the Act of Congress of August 13, 1914 (38 Stat. 686), requiring operation and maintenance charges to be based on the number of acre-feet of water delivered, with a minimum operation and maintenance charge whether water is used or not, and Subsection N of Section 4 of said Act of Congress of December 5, 1924, requiring payment of the operation and maintenance charges in advance, it is agreed that the operation and maintenance charges to be collected in advance by the District beginning with the year 1927 may be based upon an estimate of the number of acre-feet of water to be used by each tract of land during the current year, it being assumed for the purpose of such estimate that the number of acre-feet to be delivered to each tract of land during the current year will be the same number of acre-feet delivered to such tract during the preceding year, and a charge to be made for each

acre-foot of water to be delivered under said estimate and assumption, but with a minimum operation and maintenance charge per irrigable acre, whether the land is irrigated or not, entitling the landowner to the delivery of not less than one acre-foot of water per irrigable acre at the rate per acre-foot computed on the foregoing assumption.

Responsibility for Collection.

41. The District shall be responsible to the United States for the payment to the United States of the construction charges collected by the District. The amounts due the United States from the District for the operation and maintenance of the works reserved to the United States shall be first charge upon the operation and maintenance collections of said District, but no lands from which construction charges due the United States are collected by said District shall be released from the lien and obligation to pay such charges until the same have actually been paid over to the United States.

Operation and Maintenance of Certain Works Retained by the United States—Payment by District of the Pro Rata Share of Cost of Operation and Maintenance of the Retained Works.

42. The Pathfinder dam and reservoir and appurtenant buildings, the Guernsey dam and power plant and appurtenant buildings, the Whalen dam and gate tender's cottages connected therewith, the Lingle power plant and transmission lines and buildings appurtenant thereto, the Interstate canal from its head to Station 2 and the headquarters buildings and shops with the storage and material yards at Mitchell, Nebraska, will be operated and maintained by the United States, and the water to which the lands lying under the transferred works are entitled will be delivered by the United States to the District at the said point on said Interstate canal at approximately Station 2, and will there be received by said District and distributed to the parties entitled thereto, and the cost of operation and maintenance of said

reserved works (including, subject to the provision at the end of this article, the cost of the operation and maintenance of the Lingle and Guernsey power plants and transmission lines and buildings appurtenant thereto when said power plants are operated at a loss as determined by the Secretary) will be estimated, stated and determined each year beginning with the year 1927 by the Secretary and divided among the several parties receiving water therefrom in proportion to their respective interests and a statement thereof furnished to the District showing the part of said cost of operation and maintenance of the said reserved works and the cost of the protection and distribution of water therefrom properly chargeable to the land receiving water through said transferred works and the Secretary shall also announce and determine and show on his statement the cost of operation and maintenance of said reserved works. In the event the said Lingle and Guernsey power plants and transmission lines and buildings appurtenant thereto are from any cause at any time operated at a loss, then and in that event the District will promptly pay to the United States its proportionate share of said loss, but in no event will the District be required to pay any of the cost of operation and maintenance of said works while said works are operated at a profit as determined by the Secretary. Said amounts chargeable to the District for its proportionate share of the operation and maintenance of reserved works shall be paid in the following manner:

On or before July 1, 1926, the Secretary will furnish the District an estimate of the cost to be incurred by the United States during the period from July 1, 1926, to July 31, 1926, both dates inclusive, in connection with the operation and maintenance of the reserved works, and on or before July 5, 1926, the District will pay to the United States the consenting lands' proportionate part (as determined by the Secretary) of such cost. A similar notice will be given the District by the Secretary on or before August 1 for the month of August, 1926, on or before September 1, 1926, for the month of September 1926, on or before October 1, 1926, for the month

of October 1926, on or before November 1, 1926, for the month of November 1926, and on or before December 1, 1926 for the month of December 1926, and within five days after the date of each of such notices the District will pay to the United States the consenting lands' proportionate part (as determined by the Secretary) of such monthly estimated cost. At the end of the year 1926 an appropriate adjustment will be made if the estimated expense proves to be either more or less than the expense actually incurred by the United States for the period in question.

On or before April 1st, 1927, and on or before April 1, of each year thereafter, the Secretary shall furnish the District an estimate of the cost to be incurred during the calendar year for the above named operation and maintenance, and an estimate of the District's proportionate share thereof on the basis above stated, and on or before June 1st, following the delivery of said estimate said District shall pay to the United States, its said proportionate part of said estimated cost as shown in said estimate, and on or before April 1 of each year beginning with the year 1928, the Secretary will furnish the Board the statement above provided for of the actual cost of said operation and maintenance during the preceding year, including all items of expenses to be incurred by the United States as provided herein, and within thirty days after the delivery of said statement, the District shall pay to the United States or the United States shall refund or credit to the District, a sufficient amount of money so that the total amount paid by the District to the United States as finally adjusted for each year's operation and maintenance of said reserved works shall be the District's pro rata share of said actual cost and expense as above provided for and shown by the said statement of actual cost. It is understood, however, that the District is not to share, under Article 32 hereof, in the profits, if any, from the operation of the Guernsey power plant so long as it may seem necessary in the opinion of the Secretary to apply such profits to the cost of

construction of the Guernsey dam and power plant, in case future sales of water from the Guernsey reservoir, in connection with existing sales fail to cover the cost of said reservoir and power plant: provided, however, that the District is not to be called upon to meet any part of any loss arising from the operation of the Guernsey power plant until the termination of the period, if any, when the net profits from the operation of the plant are being applied upon the construction cost of the Guernsey dam and power plant.

Water Developed in Drains.

43. The irrigable lands of the Interstate Division of the project may have the use and benefit of the water supply developed in the drainage system in said division in so far as the same equitably belongs to the United States, and the diversion thereof does not conflict with any existing contract right or rights acquired through the diversion and use of such water through works constructed by the United States for the purpose of conveying and utilizing such water on other divisions of said project, and the said right to divert and utilize any portion of said drainage water to be conditional upon the District furnishing the means of diverting or pumping such water from the drains into the canal system and paying the cost of the operation and maintenance of the necessary pumps or other means of diversion.

Selection of Manager or Superintendent.

44. Until completion of the payment to the United States of the construction charges against the lands irrigated through said transferred works, the District shall employ a competent manager or superintendent, who shall have had experience as manager and superintendent in the operation of similar irrigation works. The selection of said person shall be subject to the approval of the Secretary and upon notice from the Secretary that such project manager or superintendent, is or has become unsatisfactory, the District shall promptly and as often

as such notice is given, terminate the employment of such unsatisfactory employee and employ one acceptable to the Secretary.

Existing Credits Not to be Affected.

45. Nothing in this contract shall operate to deprive any district landowner or any landowner consenting hereto, of the benefits of his pro rata share of any credits which he may have as shown by the books and accounts of the North Platte project of the United States, and such credits are to be retained to the same extent as if this contract had not been made or had not been accepted by such landowner.

Inability of District to Collect Charges from Lands in Wyoming.

46. If the District by the decree of the highest court to which the matter can be carried should be found legally disentitled to collect operation and maintenance charges (1) on lands in Wyoming, covered by contracts between the United States and the Lingle Water Users Association and the United States and Pleasant Valley Lateral Association and related contracts, and (2) on water right application lands located in the State of Wyoming, then the operation and maintenance of that part of the Interstate canal located in the State of Wyoming, shall be returned to the United States and from thenceforth the United States shall operate the same as part of the reserved works and the District shall pay to the United States each year thereafter, its pro rata share of the cost of the operation and maintenance of said portion of said canal in the same manner and at the same time as it pays the cost of operation and maintenance of the other reserved works.

District to Receive Benefit of Future Legislation.

47. Should Congress hereafter enact legislation permitting the District to meet its obligation to the United States, under more favorable terms, or reducing the indebtedness due from the District to the United States,

or providing any other terms or benefits acceptable to the District, nothing contained in this contract shall prevent the District from receiving the benefits of such legislation.

District to Keep Books and Records and Report Crop Returns.

48. In order that the United States may withdraw as completely as possible under the law from the care, operation and maintenance of the transferred works, the District shall:

(a) Install and maintain a modern set of books of account to be acceptable to the Secretary, showing all the financial transactions of said District, and furnish such financial reports and statements as may be required from time to time by the Secretary.

(b) Keep an accurate record of all crops raised and agricultural or livestock products produced on the land served by the transferred property, and furnish the Secretary on or before December 31 of each year a crop report in form prescribed by the Secretary.

(c) Keep each year a careful and accurate record of the water supply and the disposition of the same, and furnish such detailed reports concerning the same as may be required by the Secretary.

(d) Keep and report such other records as the Secretary may require and in the manner and form he may require.

Crop Census.

49. The Secretary shall have authority from time to time when he shall deem it necessary or desirable to do so, but not oftener than once a year, to cause a crop census to be taken and an investigation to be made of the acre income of the lands receiving water from the transferred works, or so much thereof as he shall deem necessary or desirable for the purpose of checking the records furnished by the District, or securing inde-

pendent information concerning the crops and income produced on the lands under the transferred works, and may require such information to be given under oath, and any owner or occupant of land receiving water from the transferred works who shall refuse to give under oath such information concerning crop production and income when requested to do so by such crop census taker or investigator shall be without right to receive water made available through any of said transferred works until such information is furnished. The census taker, enumerator or investigator authorized by the Secretary to secure such information shall report to the District Board the description of lands and names and owners or occupants of land refusing such information or refusing to verify or affirm the same under oath or affirmation, and upon notice from the Secretary the District will withhold water from such land and such landowners or occupants of land until the requested information has been furnished. A statement of the cost of such crop census and investigation will be furnished to the District and the cost thereof as shown by said statement will be paid by the District to the United States in the same manner and at the same time as the cost of the operation and maintenance of the retained works.

Inspection of Transferred Works.

50. The Secretary shall cause to be made from time to time a reasonable inspection of the transferred property to ascertain whether the terms of this contract are being satisfactorily executed by the District. Such inspection shall include examinations of the transferred property and of the books, records and papers of the District, together with examinations in the office of the Bureau of Reclamation of all contracts, papers, plans, records and programs connected with the said property. The actual expense of such inspection as found by the Secretary shall be paid by the District to the United States as herein provided.

Contract May Be Terminated in Case of Breach on One Year's Notice.

51. In case of the breach of any of the terms and conditions of this contract by the District, the United States reserves the right upon one (1) year's written notice to the District to terminate this contract, and upon the termination thereof the transferred property shall be returned to the United States in as good condition as when received, reasonable wear and damage by the elements excepted: Provided, however, that such return of the transferred property shall not affect the amount and terms of construction charges as herein provided.

Charge for Inspection, Repairs, General Expense and Other Services.

52. On June 1, 1928, and annually thereafter, the District shall pay to the United States in each case for the preceding year ending December 31, the following costs, to-wit:

(a) An equitable charge as determined by the Secretary each year to cover general expense and the cost of the bookkeeping, accounting, clerical and legal work of the Bureau of Reclamation in connection with the accounts and collections of said Interstate Division and of all inspections under Article 50.

(b) The cost of repairs to the transferred property made by the United States under Article 39.

Collection from Lands not Subject to District Assessment.

33. It is agreed and understood as stated in Article 6 that the District will collect both construction charges and operation and maintenance charges from all lands not subject to District assessments which receive water from the transferred works, and will promptly pay over to the United States the construction charges and the operation and maintenance charges so collected (a proportionate refund of such operation and maintenance

charges to be made as provided in Article 6) and will enforce payment of such charges by withholding delivery of water, and is authorized to do so, but if on account of any such lands irrigable from the transferred works being out of cultivation, or for any other reason the withholding of water proves ineffective in securing the payment of construction and operation and maintenance charges, the District, if unable to collect such charges by suit brought against such delinquent Warren Act contractor or water right applicant will report such cases to the officer of the United States in charge of the reserved works, and the United States will then take such steps as may be feasible for the collection of such charges. It is intended hereby to authorize the District in its capacity of Fiscal Agent of the United States to bring suits in its own name to collect such delinquent charges due the United States.

Construction Collections to be Promptly Turned Over.

54. All construction charges collected by the District shall be paid over immediately as required by this contract to the proper Fiscal Agent of the United States.

Replacement of Delinquent Treasurer.

55. Should the Treasurer of the District fail or neglect to pay over promptly to the United States all construction or operation and maintenance charges so collected, the Secretary shall have authority to suspend or terminate the authority of such Treasurer to make further collections or disbursements, and upon notice from the Secretary the District shall discharge such Treasurer and terminate his authority to act as Treasurer, and the Secretary may designate a Fiscal Agent of the United States to make such collections and disbursements, and to perform the duties of Treasurer of said District, as well as Fiscal Agent of the United States. In such event, such Treasurer shall have authority to perform all the acts which could be performed by a Treasurer selected by said District, but shall receive compensation only from the United States as its Fiscal Agent.

Access to Books and Records.

56. The proper officers or agents of the District shall have full and free access at all reasonable times to the project books and official records of the United States relating to the construction, acquisition, care, operation and maintenance of the transferred property, and the status of individual and District accounts, and payments of operation and maintenance and construction charges, with the right at any time during office hours to make copies of, or from, the same, or any of them, and shall consult said records from time to time for the purpose of ascertaining the extent of delinquencies of individual water users in payment of construction and operation and maintenance charges due the United States, and the question dependent thereon as to whether such users are or are not entitled to receive water, and the proper representatives of the United States shall have similar rights in respect to the books and records of the District.

Failure to Secure Confirmation of Contract by Court Authorizes United States to Terminate this Contract.

57. Although the United States is not in any way bound to proceed under this contract until a confirmatory final judgment from a court of competent jurisdiction shall have been rendered, as provided in Article 29 hereof, it is understood that if the United States desires to do so, it may proceed under this contract after the execution thereof by the District Board and the holding of the District election authorizing the same, but should the United States so proceed before confirmation, it is agreed and understood that should the District fail to secure such confirmation within a year from the date of such contract, the United States may terminate this contract and discontinue operations thereunder, and in that event the District and the District landowners shall have no further rights under this contract and shall revert to the terms of payment which would have applied to said landowners had this contract never been made.

Water Turned Out of Pathfinder and Guernsey as Ordered.

58. The water to be delivered to the District under the provisions of this contract from Pathfinder and Guernsey reservoirs, shall be turned out as ordered by the District at a rate not in excess of the District's pro rata share of the outlet capacity of the reservoir, provided the United States be notified by the District of the time and rates of delivery desired in abundant time to enable it to transmit the proper instructions to its agents in charge of the dam and storage reservoir, and in any event, at least six (6) days prior to the time that delivery is to be made, and provided further that the total amount which the District shall have the right to order from said reservoir during any irrigation season shall not exceed the proportionate share of water actually available from said reservoir to which the lands of the Interstate Division receiving water from the transferred works are entitled.

While there is an adequate supply of water in the Pathfinder and Guernsey reservoirs, the amount of water delivered to the District shall be limited only by the carrying capacity of the Interstate canal, as it now is or as it may hereafter be enlarged: Provided, that when in times of scarcity it becomes necessary to deliver less than the capacity of the canal, the water available shall be divided ratably among the various divisions of the project in proportion to the acreage of each division. The requirements of this article as to the rates of delivery of water are not to be effective (1) if a different rate of delivery is prescribed by the proper officers of the State of Nebraska or Wyoming, or by order or decree of a competent court, or (2) if unlawful diversions by third parties prevent the delivery herein required.

Additional Project Lands May Come Into District by Petition.

59. It is agreed that if requested to do so by the

Secretary, the Board of Directors of the District will permit irrigable Interstate lands in Nebraska not now included in an irrigation district organization to be brought into the District by petition.

Water Rights Unchanged.

60. It is agreed and understood that the water rights to which the project lands of the District are now entitled remain unchanged hereunder and under this contract the said project lands will be entitled to the same water rights to which they would be entitled under all existing contracts and water right applications applicable thereto, if this contract were not made.

Member of Congress Clause.

61. No member of, or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this contract, or to any benefit to arise therefrom. Nothing, however, herein contained shall be construed to extend to any incorporated company if the contract be for the general benefit of such corporation or company.

Interest in Contract Not Transferable.

62. No interest in this agreement is transferable by the District to any other party, and any such attempted transfer shall cause this contract to become subject to annulment at the option of the United States.

Rights Reserved Under Section 3737.

63. All rights of action for breach of this contract are reserved to the United States as provided in Section 3737 of the Revised Statutes of the United States.

In Testimony Hereof, the parties hereto have here-

unto affixed their names the day and year first above written.

UNITED STATES OF AMERICA,
By E. C. FINNEY,
First Assistant Secretary
of the Interior.

PATHFINDER IRRIGATION DISTRICT,
By JAS. T. WHITEHEAD, Pres.
C. A. NASH,
L. R. LATHAM,
Its Board of Directors.

Attest:
MARY MCKAY KINNEY,
Secretary.

The North Platte Valley Water Users Association hereby executes the foregoing contract for the purpose of consenting to the cancellation by the Secretary of the Interior, of the contract dated April 25, 1906, between said Association and the United States. The Association agrees, upon such cancellation by the Secretary to record blanket release of all stock subscription contract liens held by it upon lands in said Interstate Division of the North Platte project.

August 18, 1926.

NORTH PLATTE WATER USERS ASSOCIATION,

Corporate Seal.

By H. G. STEWART, President
B. J. SEGER, Secretary.

Nebraska Exhibit 370

EXHIBIT A.

Agreement Accepting Terms of Act of Congress of December 5, 1924 and Proposed Contract Between the United States and the ..... Irrigation District, and Consent to Modification of Terms of Previous Contracts and Water Right Applications.

The undersigned landowner, or landowners, and water user of the Interstate Division of the North Platte project, being the owner of the following described tract of land, to-wit:

.....

.....

.....

desiring to accept the terms of payment and conditions provided in the Act of Congress of December 5, 1924 (43 Stat. 672, 701) and the contract or proposed contract between the United States and the ..... Irrigation District, (in the form approved by the Secretary of the Interior under date of .....), hereby agrees:

(a) That the terms and conditions of all prior water right applications and contracts applicable to the above described tract of land shall be considered modified to conform to the terms and conditions of said contract between the United States and the ..... Irrigation District, and said Act of Congress of December 5, 1924.

(b) That the undersigned landowner or landowners, for themselves, their heirs, successors, administrators and assigns, ratify and confirm the organization of the said ..... Irrigation District and the inclusion of their said above described land therein, and waive any and all errors and irregularities, if any be there, in connection with the organization of said District.

(c) And the undersigned landowners respectfully petition the Honorable Board of Directors of the said ..... Irrigation District, to include the above described land in said District, if the same is not already included in said District.

(d) If any project charges due from the undersigned to the United States have been extended by the United States so as to authorize payment at a date later than the date when this contract becomes effective, the undersigned agrees that the Secretary may amend such extensions of time so as to require payment on the date when this contract becomes effective, to the end that such extended charges may be funded under Subsection L of Section 4 of said Act of Congress of December 5, 1924.

..... (Seal)

..... (Seal)

Acknowledgment.

State of Nebraska, County of ....., ss.

On this the ..... day of ....., 192.... before me, ... a Notary Public in and for said State of Nebraska, personally appeared ..... and ..... known to me to be the person.... who executed the within instrument, and acknowledged to me that ..... executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

.....

Notary Public.

Residing at:

My commission expires ..... (Seal)

EXHIBIT B.

Unentered Public Land and Entered Lands for Which No Final Certificate Has Been Issued, Located Within the Pathfinder Irrigation District. See Article No. 28.

Township 21 North, Range 51 West, 6th P. M.

Sec. 2, Lots 3&4, N½SW¼NW¼ and SE¼NW¼.
Sec. 4, E½SE¼.
Sec. 5, Lot 4, S½NW¼, SW¼ and W½ SE¼.

Sec. 6, S½NE¼, SE¼NW¼, NE¼SW¼ and N½SE¼.
Sec. 10, N½NE¼.
Sec. 11, S½SW¼NE¼, NW¼, E½SW¼ and W½SE¼.
Sec. 14, NE¼ and W½.
Sec. 15, E½NE¼.
Sec. 22, NE¼ and E½SE¼.
Sec. 23, W½NW¼ and SW¼.
Sec. 25, N½N½.
Sec. 27, NE¼, E½NW¼ and SE¼.

Township 22 North, Range 51 West, 6th P. M.

Sec. 30, Lots 3 and 4.
Sec. 35, S½NE¼SW¼, W½SW¼ and SE¼SW¼.

Township 21 North, Range 52 West, 6th P. M.

Sec. 1, Lots 3&4 and S½NW¼.
Sec. 3, Lot 6.

Township 22 North, Range 52 West, 6th P. M.

Sec. 7, Lot 1, SW¼NE¼, W½SE¼NE¼, E½NW¼, N½NE¼SW¼, SE¼NE¼SW¼.
Sec. 8, SW¼NE¼, W½SE¼NE¼, SE¼NW¼ and NE¼SW¼.
Sec. 13, SW¼NW¼ and W½SW¼.
Sec. 14, SE¼NE¼.
Sec. 15, S½NW¼NE¼, S½NE¼, S½NE¼NW¼, W½NW¼, SE¼NW¼, N½NE¼SW¼, NW¼SW¼ and NE¼SE¼.
Sec. 17, NE¼SW¼NW¼, S½SW¼NW¼, W½SE¼NW¼, NW¼SW¼, SW¼SW¼ and N½SE¼.
Sec. 18, N½NE¼, E½NE¼SW¼, Lot 4, SE¼SW¼ and SE¼.
Sec. 19, NE¼, Lots 1 & 2, E (illegible) and SE¼.
Sec. 20, S½NW¼NE¼, S¼W¼NE¼, S½NE¼W½SE¼NW¼, SW¼SW¼, W½NE¼SE¼, W½SE¼ and SE¼SE¼.
Sec. 21, S½NW¼SE¼ and SW¼SE¼.

Nebraska Exhibit 570

Sec. 25, N½NE¼, SW¼NE¼, Lot 1, N½NW¼.
Sec. 26, E½SE¼.

Township 22 North, Range 52 West, 6th P. M. (Continued).

Sec. 27, W½NW¼NE¼, N½NW¼.
Sec. 28, N½NW¼NE¼ and SW¼NW¼NE¼.
Sec. 30, W½NE¼ and E½ NW¼.
Sec. 34, SW¼NE¼, NW¼SE¼ and W½SW¼SE¼.
Sec. 35, NE¼NE¼, S½NW¼, N½SW¼, N½SE¼ and SW¼SE¼, S½NE¼.

Township 22 North, Range 55 West, 6th P. M.

Sec. 1, Lot 1, SE¼NE¼, SW¼NW¼SE¼, W½SW¼SE¼.
Sec. 2, NE¼NE¼, S½NW¼NE¼, S½NE¼, SE¼NW¼, NE¼SW¼, S½NW¼SW¼, S½SW¼ and SE¼.
Sec. 6, Lot 2, SW¼NE¼.
Sec. 9, S½SE¼NE¼.
Sec. 10, S½SE¼NE¼, S½SW¼NW¼, N½SW¼, SE¼SW¼ and SE¼.
Sec. 11, NW¼.
Sec. 12, N½NE¼, NE¼NW¼, W½NW¼, W½SE¼.
Sec. 13, NW¼NE¼, S½NE¼, NE¼NW¼.
Sec. 17, SE¼SW¼, W½SW¼SE¼.
Sec. 18, W½NE¼ and SE¼NW¼.
Sec. 20, W½NW¼NE¼.
Sec. 21, E½ (illegible) ¼.
Sec. 23, E½SE¼.
Sec. 24, W½NE¼SW¼, NW¼SW¼SW¼, E½W½SE¼, E½SE¼.
Sec. 25, E½E½.

Township 23 North, Range 53 West, 6th P. M.

Sec. 19, Lots 3 and 4.
Sec. 22, W½SE¼, W½SE¼SE¼.
Sec. 26, E½SW¼, E½SE¼.
Sec. 27, SW¼SE¼.
Sec. 32, S½SE¼.
Sec. 34, W½NE¼.

Township 22 North, Range 54 West, 6th P. M.

Sec. 1, N½ Lot 1, Lots 2, 3 & 4.
Sec. 2, E½ Lot 1.
Sec. 4, Lots 3 & 4.
Sec. (illegible), NE¼NW¼.

Township 23 North, Range 54 West, 6th P. M.

Sec. 6, Lot 7 and SE¼SW¼.
Sec. 7, Lots 1 & 2 and E½NW¼.
Sec. 9, S½NW¼ and S½.
Sec. 10, SW¼ and SW¼SE¼.
Sec. 13, NW¼, E½NE¼SW¼ and SE¼SW¼.
Sec. 14, NE¼, SE¼SW¼, N½SE¼, SW¼SE¼.
Sec. 15, W½E½ and W½.

Township 23 North, Range 54 West, 6th P. M. (Continued).

Sec. 18, N½NE¼, NE¼NW¼, Lot 1.
Sec. 22, N½NW¼NE¼, N½N½NW¼, E½NE¼-SW¼.
Sec. 24, NE¼NW¼.
Sec. 27, NE¼NE¼.
Sec. 33, S½SW¼.
Sec. 34, S½SE¼.

Township 23 North, Range 55 West, 6th P. M.

Sec. 3, S½NW¼.
Sec. 4, Lots 1 & 3, SE¼NE¼, S½NW¼.
Sec. 5, Lot 3, SE¼NW¼, NE¼SW¼.
Sec. 13, NE¼.
Sec. 17, W½SW¼NW¼.
Sec. 24, S½NE¼, N½SE¼, SE¼SE¼.
Sec. 28, S½NW¼.
Sec. 32, W½NW¼.

Township 24 North, Range 55 West, 6th P. M.

Sec. 12, E½E½SW¼, S½NW¼, SW¼SE¼.
Sec. 19, W½E½, E½W½ and Lots 1, 2, 3 & 4.
Sec. 20, NW¼NW¼, S½NW¼ and SW¼.
Sec. 28, SE¼NW¼, NE¼SW¼.

Sec. 29, E½NE¼ and NE¼SE¼.
Sec. 30, Lots 5 & 6.
Sec. 33, SE¼.

Township 23 North, Range 56 West, 6th P. M.

Sec. 2, SW¼SW¼.
Sec. 3, N½SW¼, SW¼SW¼, SE¼SE¼.
Sec. 4, Lot 3, SE¼NW¼.
Sec. 5, S½NW¼.
Sec. 10, NE¼NE¼, W½NE¼.
Sec. 15, N½NE¼, E½NW¼.

Township 24 North, Range 56 West, 6th P. M.

Sec. 13, SW¼SW¼.
Sec. 15, SW¼NW¼, N½SW¼, SE¼SW¼.
Sec. 24, NW¼NW¼.
Sec. 28, SW¼.
Sec. 27, SW¼, N½SE¼, SW¼SE¼, N½SE¼SE¼.
Sec. 30, N½SE¼.
Sec. 31, N½SE¼.
Sec. 33, E½SW¼, SE¼.
Sec. 34, N½ (illegible).
Sec. 35, W½NE¼, NW¼SE¼.

Township 25 North, Range 57 West, 6th P. M.

Sec. 4, Lots 3 & 4.
Sec. 12, W½NE¼, SE¼NE¼.
Sec. 18, NW¼NE¼.

Township 24 North, Range 57 West, 6th P. M.

Sec. 18, SE¼NW¼, NE¼SW¼, S½SE¼.
Sec. 19, S½S½NE¼, N½NW¼SE¼.
Sec. 26, N½SW¼.
Sec. 29, SE¼SE¼.
Sec, 30, Lot 4, SE¼SE¼.
Sec. 32, NE¼NE¼.
Sec. 33, N½NW¼.
Sec. 35, N½NE¼.

Township 25 North, Range 57 West, 6th P. M.

Sec. 18, Lot 4, SE¼SW¼ and S½SE¼.

Sec. 20, S½SW¼.
Sec. 29, N½NW¼.
Sec 30, Lots 2 & 3 and NE¼SW¼.
Sec. 31, N½NE¼ and E½SE¼.
Sec. 32, SW¼NE¼, NW¼NW¼, SE¼NW¼ and NW¼SE¼.

Township 23 North, Range 58 West, 6th P. M.

Sec. 1, Lot 2.

Township 24 North, Range 58 West, 6th P. M.

Sec. 3, SW¼SW¼ and SE¼SE¼.
Sec. 9, Lots 1, 2 & 3.
Sec. 11, E½NE¼, E½NW¼.
Sec. 15, NE¼NE¼.
Sec. 24, NE¼SW¼, N½SE¼.
Sec. 26, NW¼NE¼, NE¼NW¼, and SE¼.
Sec. 27, NE¼NE¼.
Sec. 35, SW¼NW¼, NW¼SW¼.

Township 25 North, Range 58 West, 6th P. M.

Sec. 25, W½SE¼.
Sec. 26, Lot 1.
Sec. 35, Lots 1 & 2.

NEBRASKA EXHIBIT NO. 571.

PHOTOSTATIC COPY

Of Order Record Book 8, Pages 1 to 82, Inclusive, Records of State Board of Control, State of Wyoming, Cheyenne, Wyoming, Re Adjudication of Water Rights From North Platte River for Lands Embraced in the Pathfinder Irrigation District.

ORDER RECORD 8, STATE BOARD OF CONTROL.

(Proofs Under Permits Nos. 609 Res., 3905 Res. 1398 Enl., and 4968 Enl., in Water Division No. One.)

North Platte River.

FINDINGS AND ORDER.

This Matter coming regularly before the State Board of Control this 25th day of November, 1934, the Board Finds:

That the Pathfinder Irrigation District has submitted before the State Engineer its proofs of appropriation under Permits Nos. 609 Res., 3905 Res., 1398 Enl., and 4968 Enl., on behalf of the individual owners of lands in Sioux, Scotts Bluff, and Morril Counties, Nebraska, and Goshen County, Wyoming, lying under the Interstate Canal;

That, under the terms of a contract entered into between the United States of America and the Pathfinder Irrigation District, dated July 31, 1926, the said District has acquired an interest in Permits Nos. 609 Res., 3905 Res., and 1398 Enl., and the constructed works authorized thereby, sufficient for the adjudication of rights under the Interstate Canal, a copy of which contract is on file in the office of the State Board of Control;

That all of said proofs were opened for public inspection at the office of the State Board of Control on the 16th day of October, 1934;

That all of said proofs, together with a notice of the above date and place of public inspection, were advertised

in a newspaper published in each of the several counties wherein the said appropriations are situated, according to law; affidavits of publication of said notices being on file with the said proofs in the office of the State Board of Control;

That, on the 22nd day of November, 1934, the members of the Board, accompanied by John D. Quinn, Secretary of the Board, T. W. Parry, and C. F. Gleason, made an inspection of the lands irrigated in the Pathfinder Irrigation District;

That the Board, having now examined all and singular the records in connection with the permits under which the said proofs of appropriation of water have been submitted, the proofs of the beneficial use of water thereunder by each appropriator as presented and filed in the office of the State Board of Control, and having made a personal inspection of the Pathfinder Irrigation District, Further Finds:

That all of the requirements of law and the rules and practice of the State Board of Control in such matters have been fully complied with in the taking and submission of said proofs;

That no contests were filed against any of the said proofs of appropriation of water;

That each of said proofs designates a lawful purpose or purposes for which water was applied to beneficial use, and that the terms of the several permits granted by the State Engineer were each regularly complied with;

That each of the said appropriations as tabulated below is included under all four of the Permits Nos. 609 Res., 1398 Enl., 3905 Res. and 4968 Enl., the date of priority of all the said appropriations under each permit being as follows:

Permit No. 609 Res., right of storage in Pathfinder Reservoir, December 6, 1904:

Permit No. 1398 Enl., right to natural flow of the North Platte River and secondary right for beneficial use of

waters stored in the Pathfinder Reservoir, December 6, 1904.

Permit No. 3905 Res., right of storage in Guernsey Reservoir, April 20, 1923.

Permit No. 4968 Enl., secondary right for beneficial use of waters stored in the Guernsey Reservoir, April 20, 1923;

That the names of the several appropriators, the maximum amounts of the appropriation of water under the right to use the natural unstored flow of the North Platte River, the use for which it is appropriated and the acreage and legal subdivisions of the lands on which the water appropriated is used and to which it is attached, are as set forth in the following table, which is hereby made a part of this decree:

* * * * *

ORDER RECORD 8, State Board of Control

It Is Therefore Ordered by the State Board of Control that the date of priority of said appropriations under the several permits included herein shall be as found above, the names of the several appropriators, the maximum amount of each of said appropriations under the right to use the natural unstored flow from the North Platte River, the beneficial uses for which the water was and is to be applied, the acreage and description of the lands in each case, to which the water appropriated for irrigation is applied, and to which it is attached, shall be, and is hereby decreed to be the same as set forth in the foregoing tabulation.

It Is Further Ordered and Determined that each of the foregoing several appropriators do have the use of water under the said permits, with the priorities as found above, in the amounts and for the beneficial purposes stated in the foregoing tabulation;

Provided, However, And It Is Hereby Ordered, that the right to the direct use of the natural unstored flow of the

North Platte River shall not exceed one cubic foot of water per second of time for each seventy acres of land irrigated, and that all appropriations of water shall be limited to the actual quantity of water which is applied to the beneficial uses herein determined;

It Is Further Ordered that certificates of appropriation of water be issued to each of said appropriators accordingly.

In Witness Whereof, the President of the State Board of Control has hereunto set his hand this the 25th day of November, 1934.

STATE BOARD OF CONTROL,
By EDWIN W. BURRITT,
President.

Attest:
JOHN D. QUINN,
Ex Officio Secretary.

Entered: January 3, 1936.

Nebraska Exhibit No. 571

NEBRASKA EXHIBIT NO. 572.

THE STATE OF WYOMING.

Certificate of Appropriation of Water.

Proof No. 21057, Page 1.
Farm Unit Number 642.

Certificate Record No. 50, Page 1.

Whereas, J. M. Pickett has presented to the Board of Control of the State of Wyoming proof of the appropriation of water from the North Platte River through the Interstate Canal, Lake Alice and Lake Minatare, the Pathfinder Reservoir and the Guernsey Reservoir under Permits No. 4968 Enl., 1398 Enl., 609 Res., and 3905 Res., and the applications therefor including the General Statement filed therewith and made a part thereof, for irrigation of the lands herein described, lying and being in Scotts Bluff County, Nebraska;

Now Know Ye: That the Board of Control, under the provisions of Chapter 122, Wyoming Revised Statutes 1931, Sections 418 and 1501, by an order duly made and entered on the 23rd day of November, A. D. 1934, in Order Record No. 8, Page 1, has determined and established the priority and amount of such Appropriations as follows:

Name of Appropriator J. M. Pickett; Post-Office Address Scotts Bluff, Nebraska;

Amount of Appropriation: (a) One (1) cubic foot per second for each seventy (70) acres of irrigable land, said appropriation to be supplied from the natural flow of the North Platte River. (b) Supplemental supply from the Pathfinder Reservoir, Lake Alice and Lake Minatare, and the Guernsey Reservoir or any combination of said sources of supply;

Date of Appropriation: Natural flow North Platte River December 6, 1904; Right of storage in Patfinder Reservoir, December 6, 1904; Right of storage in Guernsey Reservoir April 20, 1923;

Description of Land to Be Irrigated and For Which This Appropriation is Determined and Established:

9.1Acres in NE¼SE¼ Sec. 1, Twp. 23, N. Rg. 55 W.
25.3 Acres in SE¼SE¼ Sec. 1, Twp. 23, N. R. 55 W.
34.0 Acres in NE¼NE¼ Sec. 12, Twp. 23, N. R. 55 W.
Total Acreage: Sixty-Eight and Four-Tenths (68.4) Acres

The right to the use of water hereby confirmed and established is limited to irrigation and domestic use, and is subject to all the terms, conditions and limitations of the Constitution and laws of the State of Wyoming governing the appropriation of water and applicable contracts with the United States of America made pursuant to the Act of Congress of June 17, 1902 (32 Stat., 388), as amended and supplemented, known as the Federal Reclamation Law.

In Testimony Hereof, I, Edwin W. Burritt, President of the State Board of Control, have hereunto set my hand this 1st day of April, A. D. 1935, and caused the seal of said Board to be hereunto affixed.

EDWIN W. BURRITT, President.

Attest:
JOHN D. QUINN, Secretary.

(Seal)

NEBRASKA EXHIBIT NO. 574.

Department of the Interior
Bureau of Reclamation

North Platte Project, Nebraska-Wyoming

Northport Division

CONTRACT BETWEEN THE UNITED STATES AND THE NORTHPORT IRRIGATION DISTRICT PROVIDING FOR THE TRANSFER OF THE MANAGEMENT OF THE IRRIGATION WORKS OF THE NORTHPORT DIVISION TO THE DISTRICT, AND FOR REPAYMENT OF THE CONSTRUCTION COSTS UPON A CROP PRODUCTION BASIS.

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Department of the Interior
Bureau of Reclamation

North Platte Project, Nebraska-Wyoming

Northport Division

CONTRACT BETWEEN THE UNITED STATES AND THE NORTHPORT IRRIGATION DISTRICT PROVIDING FOR THE TRANSFER OF THE MANAGEMENT OF THE IRRIGATION WORKS OF THE NORTHPORT DIVISION TO THE DISTRICT, AND FOR REPAYMENT OF THE CONSTRUCTION COSTS UPON A CROP PRODUCTION BASIS.

This Agreement, made this 24 day of November, 1926, by and between the United States of America, hereinafter called the United States, acting for this purpose by E. C. Finney, First Assistant Secretary of the Interior, hereinafter called the Secretary, under the provisions of the Act of Congress approved June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, particularly Section 4 of the Act of December 5, 1924 (43 Stat. 701), hereinafter called the Reclamation Law, and The Northport Irrigation District, a public corporation organized and existing under the laws of the State of Nebraska, hereinafter called the District, having its principal place of business at Bridgeport, Morrill County, Nebraska.

Witnesseth That:

Explantory Recitals.

2. Whereas, The United States, under said Reclamation Law, is engaged in the construction of the North Platte Project, the Northport Division of which comprises approximately 15,000 acres, and is identical with the lands of the District, and

3. Whereas, the parties hereto have heretofore entered into a certain contract dated February 24, 1919, which is now in full force and effect and provides that the District shall collect and pay to the United States certain charges allocated by the United States to the Northport Division, and contemplates that the district will eventually assume the operation and maintenance of the irrigation system serving the lands of the District, and

4. Whereas, the landowners of the District desire to secure the benefits of Section 4 of the Act of Congress approved December 5, 1924 (43 Stat. 701), and to take over the operation and maintenance of the Northport Division irrigation system beginning at the intersection of the Tri-State and the Northport Canals, at the point located in the Northeast Quarter of the Southeast Quarter (NE¼SE¼) of Section fifteen (15) Township Twenty-one (21) North, Range Fifty-one (51) West, 6th P. M.

Now, Therefore, in consideration of the premises, it is hereby agreed as follows:

Terms of Payment Under Contract of February 24, 1919, Modified; Annual Construction Payment by District to the United States on Basis of Five Per Cent of Average Gross Acre Income.

5. In lieu of the Terms of payment provided in said contract of February 24, 1919, the construction charges agreed to be paid by the District to the United States, shall become due in the following installments and upon the following terms and conditions: The District will pay to the United States each year a construction charge which will be determined by multiplying the average rate per acre (as announced by the Secretary) by the total number

of irrigable acres in the District, as determined and announced by the Secretary. It is understood and agreed that the words "irrigable acres" as used in this article embraces only the lands in classes 1 to 4 and that it does not include lands which in the determination of the Secretary are temporarily or permanently unproductive. The average rate per acre to be used in determining the average construction payment to be made to the United States by the District under this article shall be five per cent of the average gross annual income (as conclusively determined by the Secretary) of the irrigable area (as conclusively determined by the Secretary) in cultivation in the District for the ten calendar years first preceding the year in which such announcement is made by the Secretary. For the purpose of determining the annual construction payment to be made by the District, all the irrigable lands are considered to be in one class, but it is agreed that the District, if it so desires, may classify the said lands, and upon the approval of such classification by the Secretary, may collect annual construction assessments at different rates per acre from said lands of the various classes; but the annual construction payments to be made by the District to the United States under said article will not be changed by such classification. The Secretary is announcing to the District the total number of irrigable acres upon which construction charges are to be collected under this article will omit any acreage which at foreclosure sale has failed to sell for a price sufficient to pay the taxes, including penalties, etc., due thereon, and said acreage will not thereafter for a period of three years, be included in said total number of irrigable acres, or for such longer period than three years as the Secretary may deem advisable; Provided, however, that this provision is not to reduce by more than 750 acres the total acreage of lands in classes 1 to 4, as conclusively determined by the Secretary and upon which construction charges are to be assessed under this article. The Secretary in announcing to the District the total number of irrigable acres upon which construction charges are to be collected under this article, will omit any

acreage upon which the construction charges, as herein adjusted, have been paid in full; will omit the unentered public lands while in that status; and will also omit the 2,555 acres temporarily unproductive as described in Article 38 hereof, while such lands remain in that status. Should the Secretary later declare such lands or any of them to be possessed of sufficient productive power properly to be placed in a paying class, the payment of construction charges against such areas shall be resumed. Should such lands or any of them, in the future be found by the Secretary to be permanently unproductive, they shall thereupon be treated in the same manner as other permanently unproductive lands as provided by the Act of May 25, 1926 (43 Stat. ——).

District to Increase Assessments to Cover Tax Sale Deficiencies.

6. The total sums due each year from the District to the United States are general obligations of the District and the District will each year levy assessments sufficient to pay the same in full to the United States, together with any deficiencies established by tax sales as hereinafter provided. The District, within two months after November 1st following May 1st upon which any such taxes become delinquent, will either purchase said lands at tax sale, if the taxes still remain unpaid, or, if the lands have within said period of two months been purchased by the County, will purchase the tax certificate or certificates held by the County. Immediately after a period of two months shall have elapsed subsequent to the date of the tax sale certificate held by the District, the District will give the notice provided by Sections 6070 and 6071 of the Compiled Statutes of Nebraska, 1922, and at the earliest practicable date thereafter, will call for a County Treasurer's deed. The District will not during the period when it holds a tax sale certificate or a tax deed covering the land, permit any such land again to be sold for taxes. As soon as the District shall have received a tax deed, it will immediately proceed to foreclose the tax lien under Section 6088, except where an interest in the land is held by

minors, idiots or insane persons, in which case suit to foreclose the tax lien shall be instituted at the earliest possible date after such minors' idiots' or insane persons' rights of redemption shall have expired under Section 6068 of the Compiled Statutes of Nebraska, 1922. If at the foreclosure sale the net amount realized is insufficient to pay the charges due the United States hereunder, the amount of the deficit arising from such foreclosure sale shall be reported by the District to the United States and the District in the next assessment levied thereafter will include an additional levy to meet such deficiencies. Provided, however, that no water shall be delivered by the United States to the District when the District is more than twelve months delinquent in the payment of any construction or operation and maintenance installment which the District has herein agreed to pay from assessments levied upon district land. If the laws of Nebraska should be amended so as to make the provisions of this Article relative to the enforcement of tax liens inapplicable, the District will nevertheless abide by the intent of this Article, which is that the District shall proceed with all possible dispatch to foreclose such tax liens and to establish without avoidable delay the amount of any deficiency to result from the failure of land sold at tax foreclosure sale to realize the sum due the United States from the District on behalf of such land.

Release of Individual Liens Provided in Water Right Applications or Reserved in Patents.

7. After the confirmation of the apportionment of benefits hereunder, the liens reserved in the patents shall (subject to the Provisions of Section 2 of the Act of Congress of May 15, 1922 (42 Stat. 541) be released and the District obligation herein provided for accepted in lieu thereof.

Penalties and Interest Reduced.

8. The penalty of one per centum (1%) per month against delinquent accounts provided in Sections 3 and 6 of the Act of August 13, 1914 (38 Stat. 686), is hereby

reduced to one-half of one per centum (½) per month on all installments due from the District to the United States subsequent to December 5, 1924, which penalty shall be in lieu of the penalties provided in Articles 15 and 17 of the contract of February 24, 1919.

Amount of Construction Charge.

9. The construction charge of $1,050,000 as provided in the contract of February 24, 1919, shall be increased by (a) penalties computed to the date of this contract on due and unpaid construction installments, (b) operation and maintenance costs for the years 1925 and 1926 incurred by the United States in the delivery of water to the District lands, together with penalties thereon, (c) the price of equipment and supplies purchased by the District from the United States. The new total thus established, amounts to $....., less the sum of $3,425 covered by the adjustment under the Act of May 25, 1926, as provided in Article 38 hereof, shall be the construction charge against the District.

Construction Charges Payable December 1.

10. The first annual construction charge to be paid by the District to the United States under Article 5 hereof will come due December 1, 1927, and one annual installment will come due on December 1 of each year thereafter. For the first two years, that is for the years 1927 and 1928, the payment of construction charges will be as follows: One-third of the annual installment shall be paid December 1, 1927, and two-thirds of the second annual installment shall be paid December 1, 1928. The balance of the sums due on the first two years' installments shall then be distributed over the remaining construction charges, the full amount of the annual payments of which shall thereafter, beginning December 1, 1929, be payable each year on December 1. Provided, however, that whenever the District shall collect from assessments for construction and have on hand in its treasury at any time as much as five thousand dollars ($5,000) the District will at once pay the same over to the United States until

such repayments have wholly prepaid the installments of the cost of construction due the United States from the District on December 1 next following such repayment.

Future Announcements Affecting Construction Payments.

11. After the close of the year 1927 and each year thereafter, and prior to April first following, the Secretary will notify the District in writing of his findings in regard to the average gross annual acre income for the irrigable lands in cultivation in the District for that year, and the average for the ten (10) year period, including such year and each preceding year within such period, unless the Secretary shall find the average gross acre income for such year to be so near the average last determined as to make no material difference in the rate previously determined, in which event the rate last determined and stated by the Secretary shall continue. The failure of the Secretary to state his findings in regard to the average gross acre income for any future year will be construed as equivalent to a finding by him that the average gross acre income for such year is the same as for the last preceding ten (10) year period, and that the rate last stated will continue.

1927 Operation and Maintenance During First Year.

12. The District's proportion of the estimated cost of operation and maintenance during the year 1927 applicable to all lands subject to District assessments or to the collection of toll charges on account of (a) operation and maintenance of the reserved works by the United States during the year 1927, and (b) the distribution of stored water and natural flow from North Platte River will be estimated by the Secretary and announced to the District as provided in Article 34. Pursuant to the provisions of subsection N, Section 4 of said Act of Congress of December 5, 1924, the funds necessary for the operation and maintenance of the transferred works during the year 1927 and each year thereafter will be collected in advance and water will not be delivered until such charges

are paid. After the end of the year 1927 the Secretary will cause a statement to be furnished to the District showing the actual cost during said year 1927 of the operation and maintenance of the works reserved by the United States, and the District's proportionate share thereof, and the actual cost of the distribution and protection of stored water run in the North Platte River, including all the items of cost and expense herein enumerated and the District's proportionate share thereof, and thereafter the charge against the District on account of said operation and maintenance during the year 1927 will be readjusted to conform to the said statement of actual cost, instead of said advance estimate of cost, by making or allowing a suitable debit or credit against or in favor of the District, as the case may be, which credit or debit will be deducted from or added to the amount which would otherwise be payable by the District to the United States the following year.

Carrying Out Obligations of Contracts.

13. The said contract of February 24, 1919, is to remain in full force and effect, except as herein modified. The District as assignee shall perform and carry out in accordance with their true intent and meaning, and to the satisfaction of the Secretary, all obligations imposed upon the United States in all contracts of whatever kind, affecting said Northport Division, now or hereafter in force, provided any such new contracts, or any modifications of existing contracts, are acceptable to the District Board as shown by a resolution of the Board duly adopted, and shall not attempt in any manner to change any of the terms of said contracts.

Without intending to list all the contracts affecting said Northport Division, particular reference is made to following contracts between

The United States and the Farmers' Irrigation District, dated August 10, 1915, and providing for the carriage of water through the Tri-State Canal to said Northport Division.

Nebraska Exhibit No. 574

United States and the Farmers' Irrigation District, dated December 6, 1921, extending the above carriage contract.

United States and the Farmers' Irrigation District, dated June 6, 1916, relating to the construction, operation and maintenance of Indian Creek wasteway.

United States and the Farmers' Irrigation District, dated December 6, 1921, and relating to the joint ownership and maintenance of Red Willow outlet.

The payments to the Farmers' Irrigation District for the carriage of water as provided in the contracts of August 10, 1915, and December 6, 1921, referred to above shall be made by the Northport District as assignee of the United States and insofar as is permitted by law, and is not otherwise herein provided, the District shall have all rights and privileges under any and over all such contracts as the United States now has or would have if this contract were not in effect.

Amount Due the United States a First Charge Upon Collections.

14. The amounts due the United States from the District for the operation and maintenance of the works reserved to the United States shall be a first charge upon the operation and maintenance collections of the District.

To Use All Powers to Collect Agreed Charges.

15. The District agrees that it will cause to be levied and collected all necessary assessments and will use all the powers and resources of the District, including the taxing power of the District and the power to withhold delivery of water, to collect and pay to the United States all charges provided for in this contract in full on or before the day that the same become due.

Agreed Charges a General Obligation of the District.

16. The District is obligated to pay to the United States the full amounts herein agreed upon according to the terms stated, regardless of individual default in the

payment of any assessment levied by the District. Annual construction assessments shall be levied against each tract of irrigable land until the full construction charge apportioned to such tract has been paid notwithstanding that other tracts of land may be sooner paid out and construction assessments (except for assessments to meet deficiencies as provided in Article 6) discontinued as to such other lands. Provided, however, that the District subject to the provisions of Article 6 is to pay the United States the amounts above agreed upon irrespective of the defaults of individual landowners in meeting their assessments. The District shall increase its levy each year in order to obtain a sum sufficient to meet the deficiencies of past years, as defined in Article 6. Such increase may be levied upon all irrigable lands although the construction charges apportioned thereon have been fully paid, and the sums paid by the owners of such lands to make up the deficiency due to the failure of others to make payments shall not be considered as payment on the construction charges apportioned against such lands upon which such payments are made, but after the owner of any such land has fully paid the amount of the apportionment of construction benefits apportioned thereto as provided hereunder, such tract of land shall thereafter be subject to construction assessments only when the District is delinquent in its construction payments to the United States and to the extent necessary to meet its pro rata share of such delinquency.

No Water to be Delivered Without Payment.

17. Pursuant to the provisions of Section 6 of the Act of Congress of August 13, 1914 (38 Stat. 686), no water shall be delivered to or for any tract of land in the District, the owners or holders of which shall be in arrears to the United States more than one year for the payment of any charge for operation and maintenance, or any annual construction charge and penalties, or any assessment levied by the District for the purpose of paying such construction, or operation and maintenance charges, or

who after the beginning of the year 1927 shall fail to pay in advance the annual operation and maintenance charges.

Statement of Status of Payments Affecting Right to Water.

18. The District will furnish the United States a list of lands in the District which are entitled to receive water under the terms of the preceding article, which list shall be amended or supplemented from time to time after changes occur in regard to the status of said land as to the qualifications to receive water, which list shall be available for the use of the United States in reducing the amount of water turned in at the head of the transferred works, which on account of delinquency in payment are not entitled to receive water. Water so withheld may be used by the District provided the District is not delinquent of any charges due the United States hereunder, upon other land in the District upon which the charges are paid.

Responsibility for Holding the United States Harmless.

19. After the transfer of said transferred works, the District shall hold the United States, its officers and agents, harmless as to any and all damage which may in any manner grow out of any operation and maintenance of the transferred works.

Rules and Regulations.

20. The Secretary reserves the right, so far as the purport thereof may be consistent with the provisions of this contract, to make rules and regulations and to add to and modify them as may be deemed proper and necessary to carry out the true intent and meaning of the law and of this contract.

Public Land Subject to Assessment Under the Smith Act.

21. Pursuant to the provisions of Section 3 of the Act of Congress of May 15, 1922 (42 Stat. 541), all unentered

public lands and entered lands for which no final certificate has been issued, located within the District, and described in a list marked "Exhibit A" attached hereto and made a part hereof, are hereby designated as subject to the provisions of the Act of Congress of August 11, 1916 (39 Stat. 506). Provided that unentered public land while in that status shall not be assessed by the District for any purpose.

Contract to be Authorized by Election and Confirmed by Court.

22. The execution of this contract shall be authorized by the qualified electors of the District at an election held for that purpose. Thereafter, without delay, the District shall prosecute to decree proceedings in court for the judicial confirmation of the authorization of this contract. The United States shall not be in any way bound to proceed under the terms of this contract until the confirmatory final judgment in such proceedings shall have been rendered, including final decision on any appeal prosecuted therefrom. The District shall furnish the United States for its files certified copies of all proceedings relating to the election upon this contract and the confirmation proceedings in connection therewith.

Claims and Complaints of Incorrect Distribution of Water.

23. The United States and its agents in charge of the reserved works will use their best efforts and best judgments to deliver and turn out for the several parties entitled to receive water from said works their correct and proper share of the water actually available therefrom, and should the District, or any of the landowners or water users of the District, feel aggrieved on account of any alleged shortage in the water supply delivered by the United States hereunder, or on account of any alleged mistakes or inaccuracies in the division of the water among the parties entitled to receive water from said reserved works, such party shall at once report to the officer of the United States in charge of said reserved

works such alleged shortage or error in the division or delivery of water, and such officer shall promptly investigate any such complaint and if he finds that the proper proportionate share of the available water supply to which such party is entitled is not being delivered for such party, he will correct the delivery insofar as the United States has control of such delivery and distribution, so that the correct proportionate share as nearly as practicable to which such party is entitled will be delivered to or for such party at the point of delivery herein provided. If any such party is dissatisfied with the decision of such officer of the United States in charge of the reserved works, such party may apply to the Secretary for the correction of any alleged error in the delivery or division of water from said reserved works but neither the United States nor its officers or agents shall be liable for damages on account of any such alleged shortage or mistake in the delivery or division of the water from said reserved works.

Distribution of Stored Water from North Platte River by State Officer.

24. The distribution of stored water from the Pathfinder and Guernsey reservoirs constructed by the United States on the North Platte River after the same is turned out of said reservoir into the river, will be in charge of the proper state officers or other officers charged by law with the distribution of stored water from the North Platte River, and with the regulation of headgates for such purposes.

Profits Under Subsections I and J of the Act of December 5, 1924.

25. Should any net profits be realized by the United States from the Lingle or Guernsey power plants, or from the power developed at said plants, or from drops on any of the canals included among the transferred works herein described, or from any of the various sources named in Subsection I and J of said act of Congress of December 5, 1924, the same will be announced and deter-

mined each year by the Secretary in a written statement to be sent to the District. The portion of such net profit, if any, as determined by the Secretary and set out in such annual statement as applicable to the District shall be credited each year as follows:

(a) On the annual installment of project construction charges of the District, beginning with the installment first coming due and continuing with succeeding construction installments as far as such credit will go until the entire construction indebtedness of the District has been paid;

(b) Thereafter upon operation and maintenance charges as the same come due to the United States;

(c) As the District may direct; but no distribution to individual water users shall be made out of such profits until all obligations to the United States have been fully paid. The Secretary shall determine the proportion of net profits, if any, under said Subsections I and J from other sources equitably to be credited to the District, as well as the amount of such net profit. The decision of the Secretary shall be conclusive as to the amount of net profits derived under Subsections I and J of said act and the equitable proportion thereof to which the District is entitled.

Works Transferred.

26. Effective December 31, 1926, there is hereby transferred to the District the care, operation and maintenance of the main canal of the Northport Division together with (a) all lateral distributaries, drainage channels, dikes, protection works and structures constructed for the benefit of the Northport Division, and (b) all buildings and telephone lines used for operation purposes in connection with said Northport Division except those reserved to the United States as stated in Article 34. No title to any of the works passes.

District Accepts Care, Operation and Maintenance.

27. The District hereby accepts the care, operation

and maintenance of the transferred works, and will care for, operate and maintain same and deliver water therefrom in full compliance with the said Reclamation Laws as they now exist or may hereafter be amended, the regulations of the Secretary now and hereafter made thereunder, and the terms of this contract and any other hereafter made thereunder, and the terms of this contract and other contracts in force affecting the transferred works, in such manner that said works shall remain in as good and efficient condition and of equal capacity for the storage, development, diversion and distribution of irrigation waters as is now the case, and will use all proper methods to secure the economical and beneficial use of irrigation water, the said operation, maintenance and control of said transferred works to be without expense to the United States.

May Require Advance Payment as Toll Charge.

28. The District is authorized to require payment of operation and maintenance charges (including the charges due the United States for the operation and maintenance of the reserved works) in advance as a toll charge and to withhold delivery of water until payment thereof is made.

Operation and Maintenance Charges to Be Uniform.

29. The said operation and maintenance charges will be uniform per irrigable acre as to all lands using similar amounts of water and each irrigable acre of said project for which the required payments have been made shall be entitled to the delivery of the same share of the available water supply of the said Northport Division to which it would be entitled under the various contracts applicable thereto if the United States continued to operate and maintain the transferred works.

Turning Over Certain Equipment and Supplies.

30. At some suitable time prior to the adjustment of construction charges provided for in Article 9 hereof, the United States will cause to be submitted to a meeting of the Board of Directors of the District, a list of the equip-

ment and supplies used in connection with the operation and maintenance of the transferred works, together with the book value thereof, the said book value being the cost thereof less estimated depreciation. Items on said list which the members of the said Board there present, or a majority thereof, shall indicate that the Board does not desire to take over, will be stricken from the list, and effective January 1, 1927, the items remaining on the list will be turned over to the District for use in the operation of the transferred works.

Keeping Transferred Works in Repair.

31. No substantial change in any of the transferred works shall be made by the District without first obtaining the written consent of the Secretary. The District shall make promptly any and all repairs to the transferred works which in the opinion of the Secretary are deemed necessary for the proper care, operation and maintenance of the transferred works. If at any time in the opinion of the Secretary any part of the transferred property shall from any cause be in a condition unfit for service, he may order the water turned out and shut off until in his opinion such property is put into proper conditon for service. In case of neglect or failure of the said District to make such repairs, the United States may at the option of the Secretary, take back the care, operation and maintenance of the transferred works, or may cause the repairs to be made and charge the cost thereof to the District, which charge the District shall promptly pay. The District shall make, announce and collect sufficient operation and maintenance or toll charge to promptly pay the same to the United States in addition to providing the necessary funds to meet the other obligations of the District.

Operation and Maintenance Payable in Advance.

32. The estimated operation and maintenance charges applicable to each tract of land receiving water through the transferred works will be collected in advance and water will not be delivered until such charge has been

paid. In order to conform as closely as possible both to the provisions of Section 5 of the Act of Congress of August 15, 1924 (38 Stat. 686), requiring operation and maintenance charges to be based on the number of acre feet of water delivered, with a minimum of operation and maintenance charges whether water is used or not, and Subsection N of Section 4, of said Act of Congress of December 5, 1924, requiring payment of the operation and maintenance charge in advance, it is agreed that the operation and maintenance charges to be collected in advance by the District, beginning with the year 1927 may be based on the estimate of the number of acre-feet of water to be needed by each tract of land during the current year, it being assumed, for the purpose of such estimate, that the number of acre-feet to be delivered to each tract of land during the current year will be the same number of acre-feet delivered to such tract during the preceding year, and a charge will be made for each acre-foot of water to be delivered under such estimate and assumption, but with the minimum operation and maintenance charge for each irrigable acre, whether the land is irrigated or not, entitling the landowner to the delivery of not less than one acre-foot of water per irrigable acre at the rate per acre foot computed on the foregoing assumption.

Responsibility for Collection.

33. The District shall be responsible to the United States for the payment to the United States of construction charges collected by the District, and no lands from which construction charges due the United States are collected by said District shall be released from the lien and obligation to pay such charges until the same have actually been paid over to the United States.

Operation and Maintenance of Certain Works Retained by the United States—Payment by District of a Pro-rata Share of Cost of Operation and Maintenance of the Retained Works.

34. The Pathfinder dam and reservoir, with works in-

cidental thereto, including buildings and telephone lines to Casper, Wyoming, the Guernsey dam and reservoir with works incidental thereto, including buildings and telephone line to Guernsey, Wyoming, the Guernsey dam power plant; the Lingle power plant, with buildings and works appurtenant to both plants; all lines for transmission of electrical energy, together with transformer stations and incidental equipment of every kind or nature now owned or hereafter acquired, the office building and shops, with the storage and material yards at Mitchell, Nebraska, will be operated and maintained by the United States, and for the lands lying under the transferred works, the water to which such lands are entitled will be delivered by the United States to the District at the point described in Article 4 above, and will there be received by the said District and distributed to the parties entitled thereto, and the cost of operation and maintenance of said reserved works, including the net cost of the operation and maintenance of the Guernsey dam power plant, the Lingle power plant, the buildings and works appurtenant to both plants, and all lines for the transmission of electrical energy together with transformer stations and incidental equipment of every kind and nature now owned or hereafter acquired, will be estimated, stated and determined each year, beginning with the year 1927, by the Secretary, and divided among the several parties receiving water therefrom in proportion to their respective interests, and a statement thereof furnished to the District showing the part of said cost of operation and maintenance of said reserved works, and the cost of the protection and distribution of water therefrom properly chargeable to the land receiving water through said transferred works, and the Secretary shall also announce and determine and show on said statement the cost of the operation and maintenance of said reserved works. Said amounts chargeable to the District for its proportionate share of the operation and maintenance of reserved works shall be paid in the following manner:

On or before April 1, 1937, and on or before April 1

of each year thereafter the Secretary shall furnish the District an estimate of the cost to be incurred during the calendar year for the above named operation and maintenance, and an estimate of the District's proportionate share thereof on the basis above stated, and on or before June 1 following the delivery of said estimate, said District shall pay to the United States, its said proportionate part of said estimated cost as shown in said estimate, and on or before April 1, of each year beginning with the year 1928, the Secretary will furnish the District with a statement of the actual cost of said operation and maintenance during the preceding year, including all items of expense incurred by the United States as provided herein, and within thirty days after the delivery of said statement, the District shall pay to the United States, or the United States shall refund or credit to the District, a sufficient amount of money so that the total amount paid by the District to United States as finally adjusted for each year's operation and maintenance of said reserved works shall be the District's prorata share of said actual cost and expense as above provided for and shown by said statement of actual cost.

Water Developed in Drains.

35. The irrigable land of the Northport Division of the project may have the use and benefit of the water supply developed in the drainage system in said division insofar as the same equitably belongs to the United States, and the diversion thereof does not conflict with any existing contract right or rights acquired through the diversion and use of such water through works constructed by the United States for the purpose of conveying and utilizing such water on other divisions of said project or under Warren Act contract, the said right to divert and utilize any portion of said drainage water to be conditional upon the District furnishing the means of diverting or pumping such water from drains into the canal system and paying the cost of the operation and maintenance of the necessary pumps or other means of diversion.

Nebraska Exhibit No. 574

Selection of Manager or Superintendent.

36. Until completion of payment to the United States of Construction charge against the lands irrigated through said transferred works, the District shall employ a competent manager or superintendent who shall have had experience as manager and superintendent in the operation of similar irrigation works. The selection of said person shall be subject to the approval of the Secretary and upon notice from the Secretary that such project manager or superintendent is or has become unsatisfactory, the District shall promptly and as often as such notice is given, terminate the employment of such unsatisfactory employee and employ one acceptable to the Secretary.

Existing Credits Not to Be Affected.

37. Nothing in this contract shall operate to deprive any district land owner of the benefits of his pro-rata share of any credits which he may have as shown by the books and accounts of the project, and such credits are to be retained to the same extent as if this contract had not been made.

Adjustment Under Omnibus Bill, Act of May 25, 1926. (44 Stat.)

38. In pursuance of Section 25 of the so-called Omnibus Bill, Act of May 25, 1926, there shall be deducted from the total construction costs chargeable to the Northport Division, the sum of $3,425.00 on account of error or mistake in charging the cost of secondary investigations to this division, and in pursuance of Section 26 of said act all payments upon construction charges shall be suspended against the following lands; 2,555 acres temporarily unproductive for lack of fertility in the soil; all as shown by classification heretofore made under the supervision of the Board of Survey and Adjustments. as shown in the tables on page 39 and 40 of House Documents 201, 69th Congress, first session as revised and as checked and modified as outlined "In General Recommendations" numbered 2 and 4, page 60 of said document.

Nebraska Exhibit No. 574

District to Keep Books and Records and Report Crop Returns.

39. In order that the United States may withdraw as completely as possible under the law from the care, operation and maintenance of the transferred works, the District shall;

(a) Install and maintain a modern set of books of account, to be acceptable to the Secretary, showing all the financial transactions of said District, and furnish such financial report and statement as may be required from time to time by the Secretary.

(b) Keep an accurate record of all crops raised and agricultural and livestock products produced on the land served by the transferred property and furnished the Secretary before December 31st of each year, crop report in form prescribed by the Secretary.

(c) Keep each year a careful and accurate record of the water supply and the disposition of the same, and furnish such detailed report concerning the same as may be required by the Secretary.

(d) Keep and report such other records as the Secretary may require and in the manner and form he may require.

Crop Census.

40. The Secretary shall have authority from time to time when he shall deem it necessary or desirable to do so, but not oftener than once a year, to cause a crop census to be taken and an investigation to be made of the acre income of the land receiving water from the transferred works, or so much thereof as he shall deem necessary or desirable for the purpose of checking the records furnished by the District or securing independent information concerning the crops and income produced on the lands under the transferred works, and may require such information to be given under oath, and any owner or occupant of land receiving water from the transferred works who shall refuse to give under oath such informa-

tion concerning crop production and income when requested to do so by such crop census taker or investigator shall be without right to receive water made available through any of said transferred works until such information is furnished. The census taker, enumerator or investigator authorized by the Secretary to secure such information shall report to the District the description of lands and names and owners or occupants of land refusing such information, or refusing to verify or affirm the same under oath or affirmation, and upon notice from the Secretary the District will withhold water from such land and such landowners or occupants of land until the requested information has been furnished. A statement of the cost of such crop census and investigation will be furnished to the District and the cost thereof as shown by said statement will be paid by the District to the United States in the same manner and at the same time as the cost of the operation and maintenance of the retained works.

Inspection of Transferred Works.

41. The Secretary shall cause to be made from time to time a reasonable inspection of the transferred property to ascertain whether the terms of this contract are being satisfactorily executed by the District. Such inspection shall include the examination of the transferred property and of the books, records and papers of the District, together with examination in the office of the Bureau of Reclamation of all contracts, papers, plans and records and programs connected with the said property. The actual expense of such inspection as found by the Secretary shall be paid by the District to the United States as herein provided.

Contract May Be Terminated in Case of Breach on One Year's Notice.

42. In case of the breach of any of the terms and conditions of this contract by the District, the United States reserves the right upon one (1) year's written notice to the District to terminate this contract and upon the termination thereof the transferred property shall be re-

turned to the United States in as good condition as when received, reasonable wear and damage by the elements excepted; Provided, however, that such return of the transferred property shall not affect the amount and terms of construction charges as herein provided.

Charge for Inspection, Repairs, General Expense and Other Services.

43. On June 1, 1928, and annually thereafter, the District shall pay to the United States in each case for the preceding year ending December 31, in addition to the other costs, as enumerated in this contract, the following costs, to-wit:

(a) An equitable charge as determined by the Secretary each year to cover general expense and the cost of the bookkeeping, accounting, clerical and legal work of the Bureau of Reclamation in connection with the accounts and collections of said Northport Division and of all inspection under Article 41.

(b) The cost of repairs to the transferred property made by the United States under Article 31.

Access to Books and Records.

44. The proper officers or agents of the District shall have full and free access at all reasonable times to the project books and official records of the United States relating to the construction, acquisition, care, operation and maintenance of the transferred property, and the status of the individual and District accounts and payments of operation and maintenance and construction charges, with the right at any time during the office hours to make copies of or from the same, or any of them, and shall consult said records from time to time for the purpose of ascertaining the extent of delinquencies of individual water users in payment of construction and operation and maintenance charges due the United States, and the question dependent thereon as to whether such users are or are not entitled to receive water, and the proper representatives of

the United States shall have similar rights in respect to the books and records of the District.

Failure to Secure Confirmation of Contract by Court Authorizes United States to Terminate This Contract.

45. Although the United States is not in any way bound to proceed under this contract until a confirmatory final judgment of a court of competent jurisdiction shall have been rendered, as provided in Article 22 hereof, it is understood that if the United States desires to do so, it may proceed under this contract after the execution thereof by the District Board and the holding of the District election authorizing the same, but should the United States so proceed before confirmation, it is agreed and understood that should the District fail to secure such confirmation within a year from the date of such contract, the United States may terminate this contract and discontinue operations thereunder, and in that event the District and the District landowners shall have no further rights under this contract and shall revert to the terms of payment which would have applied to said landowners had this contract never been made.

Water Turned Out of Pathfinder and Guernsey As Ordered.

46. The water to be delivered to the District under the provisions of this contract from the Pathfinder and Guernsey reservoirs, shall be turned out as ordered by the District at a rate not in excess of the District's pro rata share of the outlet capacity of the reservoir, provided the United States be notified by the District of the times and rates of delivery desired in abundant time to enable it to transmit the proper instructions to its agents in charge of dam and storage reservoir, and in any event at least six (6) days prior to the time that delivery is to be made, and provided further that the total amount which the District shall have the right to order from said reservoir during any irrigation season shall not exceed the

proportionate share of water actually available from said reservoir to which the lands of the Northport Division receiving water from the transferred works are entitled.

While there is an adequate supply of water in the Pathfinder and Guernsey reservoirs, the amount of water delivered to the District shall be limited only by the provisions of Article 3 of the contract of August 10, 1915 between the United States of America, The Tri-State Land Company and the Farmers' Irrigation District, as amended by the provisions of Article 9 of the contract of December 6, 1921, between the United States of America, and the Farmers' Irrigation District, which terms and conditions are made a part hereof. Provided, however, that when in times of scarcity it becomes necessary to deliver less than as above provided the water available shall be divided ratably among the various divisions of the project in proportion to the acreage of each division. The requirements of this article as to the rates of delivery of water are not to be effective (1) if a different rate of delivery is prescribed by the proper officials of the States of Nebraska or Wyoming, or by order or decree of a competent court, or (2) if unlawful diversions by third parties prevent the delivery herein required.

Water Rights Unchanged.

47. It is agreed and understood that the water rights to which the project lands of the District are now entitled remain unchanged hereunder and under this contract the said project lands will be entitled to the same water rights and only such water rights as they would be entitled under existing contracts if this contract were not made.

Interest in Contract Not Transferable.

48. No interest in this agreement is transferable by the District to any other party, and any such attempted transfer shall cause this contract to become subject to annulment at the option of the United States. All rights of action for breach of this contract are reserved to the United States as provided in Section 3737 of the Revised Statutes of the United States.

Nebraska Exhibit No. 574

Member of Congress Clause.

49. No Member of, or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this contract, or to any benefits to arise therefrom. Nothing, however, herein contained shall be construed to extend to any incorporate company if the contract be for the general benefit of such corporation or company.

In Testimony Whereof, the parties hereto have hereunto affixed their names the day and year first above written.

UNITED STATES OF AMERICA,
By (Sgd) E. C. FINNEY,
First Assistant Secretary.
NORTHPORT IRRIGATION DISTRICT,
By (Sgd) ISAAC CATRON
(Sgd) DELOS WALKER
(Sgd) CLYDE E. TODD
Its Board of Directors.

Attest:
(Sgd) ROBT. H. WILLIS
Secretary.
SEAL

Nebraska Exhibit No. 574

NEBRASKA EXHIBIT 575.

Department of the Interior

Bureau of Reclamation

North Platte Project

This Agreement, Made and entered into this 1st day of April, 1934, by and between the United States of America, herein styled the United States, acting for this purpose by T. A. Walters, First Asst. Secretary of the Interior, under the provisions of the Act of June 17, 1902 (32 Stat., 388), as amended or supplemented, particularly the Act of May 25, 1926 (44 Stat., 636), herein styled the Reclamation Law, and the Northport Irrigation District, herein styled the District, an irrigation district organized and existing under the laws of the State of Nebraska, having its office at Bridgeport, Morrill County, Nebraska.

Witnesseth, That:

Explanatory Recitals.

1. Whereas, the parties hereto, under date of November 24, 1926, entered into a contract, hereinafter styled the contract of 1926, under which, among other things the District was extended the benefits of Section 4 of the Act of December 5, 1924 (43 Stat., 701), for the payment of the District's construction cost to the United States, and

2. Whereas, the United States, the Tri-State Land Company, and the Farmer's Irrigation District, under date of August 10, 1915, entered into a contract, herein styled the contract of 1915, under which, among other things, the United States acquired the right to carry 250 second feet of water in the Company's canal for the benefit of the lands of the Northport Division of the North Platte Project, which lands are now included in the District, and under which the United States and its assigns agreed to pay annually an operation and maintenance charge as provided in Article 7 of said contract, and

3. Whereas, under Article 13 of the contract of 1926, the District, as the assignee of the United States, agreed

to perform the obligation imposed upon the United States under said contract of 1915, and

4. Whereas, the District is in financial difficulties because of the low acre return, during the past several years, from its cultivated area, and

5. Whereas, the United States and the District desire, in so far as possible, to harmonize the annual payments on construction cost to be made by the District to the United States with the returns from the District's land, and to provide for the performance of the obligation assumed by the District under Article 13 of the contract of 1926.

Now, Therefore, It Is Mutually Agreed that the contract of 1926 is amended in the following particulars:

Annual Payment of Farmers' Irrigation District under Contract of 1915.

6. The United States agrees, provided appropriations are made therefor by Congress, to pay on or about July 15, 1934, and on or about July 15th of each year thereafter during the term of this agreement, from the district's share of the annual project power profits as determined under Article 25 of the contract of 1926 to the Farmers' Irrigation District for and on behalf of the district's obligation to the Farmers' Irrigation District under Article 13 of contract of 1926, the sum of $6,000.00 on the operation and maintenance charge provided for in Article 7 of said contract of 1915; Provided, that, if the amount of the District's share of said power revenues is less than $6,000.00 in any year next preceding the years in which payment is to be made, the United States will pay to the Farmers' Irrigation District, for and on behalf of the District, the full amount of the District's share of said power revenues; Provided, further, that any deficit so resulting in the annual amount due from the District to the Farmers' Irrigation District under the contract of 1915 will be paid annually by the District to the Farmers' Irrigation District in performance of the District's obli-

gations to the United States under Article 13 of the contract of 1926.

Terms of Payment Under Contract of 1926 Modified.

7. The Departmental notice of May 6, 1933, announcing the construction charge instalment under the crop production plan due and payable December 1, 1934, and notice dated April 4, 1934, announcing the construction charge instalment under the crop production plan due and payable December 1, 1935, are hereby revoked and in lieu of the terms of payment stipulated in the contract of 1926, the District will pay to the United States the unpaid balance of the construction charge allocated to productive lands stated in Article 8 of this contract in accordance with the following terms and conditions:

The District will pay to the United States on December 1, 1939, $5,000.00, on December 1, 1940, $7,500; on December 1, 1941, $10,000; on December 1, 1942, $12,500; on December 1, 1943, $15,000; on December 1 of the years 1944 to 1948, both inclusive, $25,000 annually; and on December 1 of the years 1949 to 1963, both inclusive, $32,265 annually, or such amounts of December 1 of the years 1949 to 1963, both inclusive, as the Secretary may determine to be necessary with the power credits stated in the next paragraph hereof to complete the payment of the District's productive land construction charge indebtedness to the United States in the years 1949 to 1963, both inclusive, the Secretary's determination of the annual amounts payable by the District hereunder in the years 1949 to 1963, both inclusive, to be final and binding on both parties hereto.

In addition to said annual payments, it is understood and agreed that the United States, in each of the years 1934 to 1963, both inclusive, will credit, as an annual payment on the total construction charge payable by the District on account of productive lands the amount of the District's share of the annual power and other profits for the year preceding determined under Article

25 of the contract of 1926 in excess of the $6,000 paid annually to the Farmers' Irrigation District, under Article 6 hereof.

If at any time any district land not now listed as productive, and so not now subject to the payment of construction charges, should be, by Departmental notice to the District, included within the area of the productive land of the District on which construction charges are then payable, the amount of the construction charge payable on behalf of such added land, the due dates of the instalments when such construction charges are payable, and the respective amounts due on each due date will be stated by the Secretary to the District in such Departmental notice or notices (as provided in Article 9 hereof) and the District agrees to pay the amounts so stated on the dates so fixed, in addition to the construction charges stated in the previous paragraphs of this article. The total amount of construction charges payable by the District to the United States under this paragraph is not to exceed $300,000.

Amount of Construction Charge.

8. It is agreed and understood that the District's construction charge obligation determined in accordance with Article 9 of the 1926 contract (exclusive, however, of any obligation to be assumed by the District on behalf of any permanently unproductive lands hereafter included in the paying area by the Secretary under Section 41 of the Act of May 25, 1926, (44 Stat., 647) is $1,112,464.17; that the District has paid in cash and by credits under Article 25 of said 1926 contract on the construction charge instalments for the years 1932 and prior years a total of $75,321.00 that the unpaid balance is $1,037,143.17; and that of the unpaid balance $778,957.78 is applicable to productive lands (Classes 1 to 4) and $258,185.39 is applicable to temporarily unproductive or suspended lands (Class 5).

Payment of Construction Cost Allocated to Temporarily Unproductive Lands and to Lands Now Classed as Permanently Unproductive.

9. Included in the District are 3,753 acres of temporarily unproductive lands for which payments on construction cost are suspended under the contract of 1926. With respect to said lands (and to the permanently unproductive District lands, if any, restored to the paying area under Section 41 of the Act of May 25, 1926, (44 Stat., 647) it is agreed, that, should the Secretary find such lands, or any of them, to be possessed of sufficient productiveness to be placed in a paying class, the District will pay the construction cost allocated thereto under the Reclamation Law, in 40 annual instalments in amounts to be stated by the Secretary in his notice ordering any such lands into a paying class. The first of such instalments shall be due and payable on December 1 of the year following that in which the Secretary gives notice of the finding for which provision is made herein, and thereafter a payment in the amount to be stated by the Secretary in such notice or notices shall be made on December 1st of each year of said repayment period. All findings of fact necessary in determining said amounts shall be made by the Secretary whose findings and his decisions based thereon, shall be conclusive upon the parties hereto.

Assessment of Construction Charges.

10. In order to make the payments required hereunder, the District, commencing with the calendar year 1938, will levy assessments under the laws of Nebraska, against the lands of the District, which, under the contract of 1926, and this agreement, are in a paying class and in each calendar year thereafter will continue to levy assessments against said lands, as the same are constituted at the time of such levy as a result of any and all adjustments made by the Secretary hereunder, until the total construction cost allocated to the lands of the District, under the Reclamation Law, shall have been paid in full.

It is expressly agreed that the construction cost allocated to the lands of the District by the Secretary, pursuant to the Reclamation Law, is a general obligation of the District. The District, in levying assessments, will increase the assessments levied against each tract of land by an amount estimated to be sufficient, because of established or estimated delinquencies resulting or to result because of the failure of District landowners to pay their assessments when due, to enable the District to pay in full, the amount of each instalment to the United States on the due dates thereof.

Payment of Outstanding District Warrants.

11. The District expressly agrees, that during the years 1934 to 1938, both inclusive, it will levy assessments against the District lands to obtain sufficient revenue to liquidate its indebtedness on account of outstanding district warrants, which indebtedness at the date hereof is estimated to be $45,000.00. The said assessments shall be levied by the District under and pursuant to the laws of Nebraska, and in particular Chapter 46, Section 121, Compiled Statutes of Nebraska 1929, governing the levy and collection of assessments by irrigation districts for the payment of past due obligations.

It is further agreed, that during said years 1934-1938, both inclusive, the District will not issue any warrants for any purpose which cannot be paid on demand, without first obtaining the written consent of the Secretary. The default of the District in the faithful performance of this provision shall be sufficient cause for the cancellation of this agreement by the Secretary. The authorization of this agreement by the electors of the District shall be construed as a limitation on the power of the directors of the District to create warrant indebtedness except as stipulated herein.

For the purpose of enforcing the collection of the assessments levied under this article, the United States authorizes the District, its officers, agents and employees, to refuse to deliver water from the water supply made

available by the United States for the lands of the District under the Reclamation Law, to or for any tract of land delinquent under the laws of Nebraska for more than twelve months in the payment of said assessments. This provision is supplemental to Article 17 of the contract of 1926.

Contract of 1926 to Remain in Force.

12. The contract between the United States and the District, dated November 24, 1926, shall remain in full force and effect, except as herein expressly modified.

Contract to Be Authorized by Election and Confirmed by Court.

13. The execution of this contract shall be authorized by the qualified electors of the District at an election held for that purpose. Thereafter, without delay, the District shall prosecute to decree proceedings for the judicial confirmation of the authorization of this contract. The United States shall not be bound to proceed under the terms of this contract until the confirmatory final judgment in such proceedings shall have been rendered, including final decision on any appeal prosecuted therefrom. The District shall furnish the United States for its files certified copies of all proceedings relating to the election upon this contraction and the confirmation proceedings in connection therewith.

Board of Directors of District Authorized to Execute Amendatory or Supplemental Agreements.

14. The authorization of the execution of this agreement by the electors of the District shall empower the Board of Directors of the District, and their successors in office, by proper resolution and without further authorization from the electors of the District, to execute, with the United States, any agreements, amendatory or supplemental of this agreement, which amendatory or supplemental agreements do not increase the amount of the indebtedness of the District to the United States as herein and heretofore authorized and either have as

their purpose the extending to the District of the benefit of any future legislation enacted by Congress, or amend this agreement in any other respect for the benefit of the District or its landowners.

Appropriation Clause.

15. This contract is contingent upon the appropriation by Congress, from year to year, of funds sufficient to carry it out; and no liability shall accrue against the United States in case such funds are not appropriated by Congress.

Member of Congress Clause.

16. No member of or delegate to Congress, or resident commissioner shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom. Nothing, however, herein contained shall be construed to extend to this contract if made with a corporation for its general benefit.

In Witness Whereof, the parties have hereunto affixed their names the day and year first above written.

UNITED STATES OF AMERICA,
By T. A. WALTERS,
First Assistant Secretary
of the Interior.

(Seal)

NORTHPORT IRRIGATION DISTRICT,
By P. G. GEBAUER,
President.

Attest:
MABEL J. THOMPSON,
Secretary.

NEBRASKA EXHIBIT 576.

Photostatic Copy

Of Order Record Book 8, Pages 159 to 172 Inclusive
Records of State Board of Control

State of Wyoming, Cheyenne, Wyoming
Re Adjudication of Water Rights
From North Platte River

For Lands Embraced in the Northport Irrigation District.

Order Record 8—State Board of Control.

Proof Under Permit Numbers 1398 Enl., 4969 Enl., 609 Res., and 3905 Res. in Water Division No. One (Northport Irrigation District, Nebraska)

North Platte River

Findings and Order.

This Matter coming regularly before the State Board of Control this 15th day of November, 1937, the Board finds:

That Certificates of Appropriation under proof submitted by the Northport Irrigation District of Bridgeport, Nebraska have not been issued in accordance with a minute of the Board entered April 15th, 1936 and a proper Order for issuance of these Certificates has not been entered;

That the Northport Irrigation District of Bridgeport, Morrill County, Nebraska, has submitted before the State Engineer of Wyoming, sworn proof of appropriation of water under Permits Nos. 1398 Enl., 4969 Enl., 609 Res. and 3905 Res., on behalf of the individual owners of lands in Morrill County, Nebraska, lying under and irrigated through the Northport Canal;

That under the terms of a contract entered into between the United States of America and the Northport Irrigation District, dated November 24, 1926, the said District has acquired an interest in Permits Nos. 1398 Enl.,

4969 Enl., 609 Res., and 3905 Res., and the construction works authorized thereby, sufficient for the adjudication of water rights under the Northport Canal; and that a certified copy of said contract is on file in the Office of the State Board of Control;

That a certified copy of the Order of the Board of County Commissioners of Morrill County, Nebraska, for organization of the Northport Irrigation District is filed with the proof;

That said proof was opened for public inspection at the office of the State Board of Control, State Capitol Building, Cheyenne, Wyoming, on the 30th day of March, 1936 between the hours of 9:00 o'clock A.M., and 4:00 o'clock P.M.;

That said proof together with a notice of the above date and place of inspection, was advertised in a newspaper of general circulation in the community where said appropriations are situated, according to law; and that an affidavit of such publication is on file in the office of the State Board of Control;

The Board, having now examined all and singular the records in connection with the permits under which said proof of appropriation of water has been submitted, the proof of the beneficial use of water thereunder by each appropriator as presented and filed in the office of the State Board of Control, Further Finds:

That the Northport Canal is a unit of the North Platte Project of the United States Bureau of Reclamation and was constructed as an extension of the Tristate Canal diverting water from the North Platte River directly east of the Wyoming-Nebraska state line. That storage water from Pathfinder and Guernsey Reservoirs located in Wyoming is delivered to this canal and that water diverted through the Interstate Canal in Wyoming is picked up by the Tristate Canal and re-applied to this unit of the project;

That all requirements of law and the rules and practice

of the State Board of Control in such matters have been complied with in the taking and submission of said proof;

That no contests were filed against the said proof of appropriation of water;

That said proof designates a lawful purpose or purposes for which water was applied to beneficial use; and that the terms of the several permits granted by the State Engineer were each regularly complied with;

That each of the several individual appropriations under the said proof as tabulated below is included under all four Permits Nos. 1398 Enl., 4969 Enl., 609 Res., and 3905 Res., the dates of priority of all said appropriations under each permit being as follows:

Permit No. 1398 Enl., Natural flow re-application water of the North Platte River and Secondary right for beneficial use of water stored in Pathfinder Reservoir, December 6, 1904;

Permit No. 4969 Enl., Filed September 19, 1934, secondary right for beneficial use of water stored in Guernsey Reservoir under priority of April 20, 1923;

Permit No. 609 Res., right of storage in Pathfinder Reservoir, December 6, 1904;

Permit No. 3905 Res., right of storage in Guernsey Reservoir, April 20, 1923.

That the names of the several appropriators, the maximum amounts of appropriation of water under the right to use the natural flow of the North Platte River by re-application through the Interstate and Tristate Canals, the use for which it is appropriated, and the acreage and legal subdivision of lands on which the water appropriated for irrigation is used, and to which said use is attached are as set forth in the following tabulation which is hereby made a part of this decree:

* * * * *

It Is Therefore Ordered and Decreed by the State Board of Control that the dates of priority of said appropriations shall be as found above. The names of the several appropriators, the maximum amount of each of the said appropriations under the right to use the natural flow of the North Platte River by re-application through the Interstate and Tristate Canals, the beneficial uses for which the water has been and is to be applied, the acreage and description of the lands in each case to which the water appropriated for irrigation is applied and to which said use shall attach, are, and are hereby decreed to be the same as set forth in the foregoing tabulation;

It Is Further Ordered and Decreed that each of the foregoing and several appropriators do have the use of the water under the said permits in the amounts, and with the dates of priority as found above, and for the beneficial use as stated in the foregoing tabulation;

Provided, However, And It Is Hereby Ordered, that the right to the use of the natural flow of the North Platte River by re-application shall not exceed the statutory limit of one (1) cubic foot of water per second of the time for each 70 acres of land irrigated and that all appropriations of water herein adjudicated shall be limited to the actual quantity of water which is beneficially applied to the uses herein determined.

It Is Further Ordered that Certificates of appropriation of water be issued to each of the said appropriators in accordance with the foregoing tabulation, and in accordance with the previous action of the Board taken on April 15, 1936.

In Witness Whereof, I, John D. Quinn, President of the State Board of Control have hereunto set my hand this 15th day of November, 1937.

STATE BOARD OF CONTROL,
By JOHN D. QUINN, President.

Attest:
FULTON D. BELLAMY, Ex Officio Secretary.

Entered: March 15, 1938.

NEBRASKA EXHIBIT 577.

The State of Wyoming

Certificate of Appropriation of Water

Certificate Record No. 55, Page 318.
Proof Number 21826, Page 1.
Farm Unit Number 187.

Whereas, Charles A. Tolle has presented to the Board of Control of the State of Wyoming proof of the appropriation of water from North Platte River through the Interstate and Tristate Canals under Permit Number 1398 Enl., the Pathfinder Reservoir under Permit Number 609 Res., the Guernsey Reservoir under Permit Number 3905 Res., and Secondary Permit Number 4969 Enl., and the applications therefor including the General Statement filed therewith and made a part thereof, for the irrigation of the lands herein described, lying and being in Morrill County, Nebraska.

Now Know Ye: That the Board of Control, under the provisions of Chapter 122, Wyoming Revised Statutes 1931, Sections 418 and 1501, by an order duly made and entered on the 15th day of November, 1937, in Order Record No. 8, Page 159, has determined and established the priority and amount of such Appropriation as follows:

Name of Appropriator Charles A. Tolle; Post-Office Address: Lodgepole, Nebraska.

Amount of Appropriation: (a) One (1) cubic foot per second of time for each seventy (70) acres of irrigable land, said appropriation to be supplied by re-application of water from the Interstate Canal which is picked up by the Tristate Canal, and (b) Supplemental storage supply from the Pathfinder Reservoir and the Guernsey Reservoir; or any combination of the said sources of supply;

Date of Appropriation: Natural flow re-application water of the North Platte River, December 6, 1904; Right

of storage in Pathfinder Reservoir, December 6, 1904; Right of storage in Guernsey Reservoir, April 20, 1923:

Description of Land to be Irrigated and for Which This Appropriation is Determined and Established: 26.5 A, Lot 2; 36.6 A, SW¼ NE¼, Sec. 5, T. 19 N., R. 49 W.

Total Acreage: Sixty-three and one-tenth (63.1) acres.

The right to the use of water hereby confirmed and established is limited to irrigation and domestic use, and is subject to all the terms, conditions, and limitations of the Constitution and laws of the State of Wyoming governing the appropriation of water and applicable contracts with the United States of America made pursuant to the Act of Congress of June 17, 1902 (32 Stat., 388), as amended and supplemented, known as the Federal Reclamation Law.

In Testimony Hereof, I, John D. Quinn, President of the State Board of Control, have hereunto set my hand this 26th day of March, 1938, and caused the seal of said Board to be hereunto affixed.

JOHN D. QUINN, President.

Attest:

FULTON D. BELLAMY, Ex Officio Secretary.
(Seal)

WYOMING EXHIBIT 1.

Kendrick Project

(Formerly Casper-Alcova)
5-1-39

1. *Location.*

State ..... Wyoming
Counties ..... Natrona and Carbon
Project headquarters ..... Casper

2. *History.*

Authorized ..... By the President under N. I. R. Act of June 16, 1933; PWA allotment Aug. 1, 1933.
Finding of feasibility ..... Approved by President, Aug. 30, 1935
Construction began 1933
First water available ..... Not yet available

3. *Irrigation Plan.*

Scheme of Development

Statement: Storage in Seminoe reservoir and diversion at Alcova Dam, both on North Platte river, and canals and laterals for irrigation of 35,000 acres. Power development at Seminoe. (Second unit of 31,000 ac. deferred until water supply is proven sufficient for total acreage.)

Water Supply

Source ..... North Platte River
Drainage area ..... 37,400 sq. mi.

Engineering Features
Storage Works

Reservoir—Seminoe

Location	Canyon of North Platte and Medicine Bow Rivers
Capacity (ac. ft.)	Total 1,020,000; Active 965,000
Surface area	20,000 ac.
High. water elevation	6,357

Storage Works

Dam—Seminoe (under construction, about 98% completed)

Location	37 mi. NE of Parco on North Platte R.; 72 mi. by road SW of Casper, and 30 mi. by river bed upstream from Pathfinder Dam.
Type	Concrete arch
Height above foundation	300 ft.
Ht. above stream channel	205 ft.
Base thickness	90 ft.
Crest thickness	17 ft.
Crest length	560 ft.
Volume	161,000 cu. yds.
Altitude of crest	6,361

Spillway

Type	Stoney gate intake, inclined tunnel, and horizontal tunnel outlet
Capacity	50,000 sec. ft.

Outlet Works

Type	2 72-in. steel pipes thru dam controlled by paradox gates and needle valves
Capacity	2,900 sec. ft.

Wyoming Exhibit 1

Diversion Works

Reservoir—Alcova

Location	On North Platte River
Capacity	Total 180,000 ac. ft.; Active (for Kendrick Project between elevations 5487 and 5500) 28,000 ac. ft.
High water area	2,500 ac.

Dam—Alcova (both diversion and storage)

Location	About 32 miles by highway upstream from Casper and 13 miles downstream from Pathfinder Dam by river bed
Type	Rock and earth embankment
Height above foundation	265 ft.
Ht. above stream channel	180 ft.
Base thickness	1,250 ft.
Crest thickness	40 ft.
Crest length	763 ft.
Volume	1,500,000 cu. yds.
Altitude of crest	5,510
Capacity in ac. ft. at elevation 5,500	180,000 ac. ft.

Spillway

Type	Open channel, gate controlled
Capacity	55,000 sec. ft.

Outlet Works

Type	Tunnel
Capacity	5,300 sec. ft.

Power Plants

Location	At Seminoe Dam (under construction, will be completed July 1, 1939)
Number of units	3
Horsepower	45,000
KVA rating	3—12,500
Output per annum	140,000,000 kwh

Transmission Lines

Seminoe Dam to Rawlins, Wyo., 33 Kv.—completed	35 mi.
Seminoe Dam to Casper, Wyo., 66 Kv.—completed	67 "
Seminoe Dam to Cheyenne, Wyo., 115 Kv., under construction	142 "
Cheyenne, Wyo., to Greeley, Colo., 115 Kv.—completed	53 "
Cheyenne, Wyo., to Gering, Neb., 115 Kv.—completed	93 "
Total	390 "

Carriage Distribution and Drainage System

Canals—Main (under construction, about 90% completed, first unit only)

Location	North and west of Casper
Length	62 mi. (Second unit 14 mi.)
Capacity	1,200 to 415 cu. ft. per second
Base width	34 to 20 ft.
Water depth	10 to 6.4 ft.
Number concrete lined tunnels	6
Diameter concrete lined tunnels	13.75 to 14 ft.
Total length concrete lined tunnels	17,520 ft.
Number reinforced concrete siphons	12

Number reinforced concrete culverts.....64
Number reinforced concrete wasteways.....5
Number reinforced concrete checkgates.....8
Number reinforced concrete headgates.....12
Number reinforced concrete pipe headgates 20
Number reinforced concrete and timber bridges 17
Number reinforced concrete automatic siphon type spillways.....4

Laterals (now under construction, about 10% completed)

Capacity 370 to 300 sec. ft., length	6	Miles
Capacity 300 to 50 sec. ft., length	20	"
Capacity 50 to 3 sec. ft., length	135	"

Drainage

No work has been started on this feature.

4. *Area of Irrigable Lands.*

Irrigable area proposed for ultimate development:

	First Unit	Second Unit	Total
Public land	1,746	2,397	4,143
Private land	36,291	29,930	66,221
State land unsold	1,936	2,857	4,793
Totals	39,973	35,184	75,157

Area for which Bureau of Reclamation is now prepared to supply water: None.

Wyoming Exhibit 1

Construction is in progress by the Bureau of Reclamation on the Seminoe storage dam and power plant, Alcova diversion dam and the main canal to serve the First Unit. The Alcova Dam is practically complete. Construction of canals and laterals for the Second Unit will be deferred until the water supply is proven sufficient for both units.

5. *Agriculture.*

Principal products	Will be alfalfa, barley, pasture and sugar beets
Character of soil	Sandy loam and loam
Elevation	5,500 ft.
Annual rainfall	8.80 in.
Length of growing season	5 mos.
Temperatures	Max. 104; Min. —32; Ave. 49.8

6. *Settlement.*

Population	20,000
Number of public schools	17
Number of churches	18
Amount of bank deposits	$7,713,582

WYOMING EXHIBIT 3.

United States Department of the Interior Bureau of Reclamation Casper-Alcova Project, Wyoming.

Contract Between the United States and the Casper-Alcova Irrigation District, Casper-Alcova Project, Wyoming.

This Agreement made this 3rd day of August, 1935, between the United States of America, hereinafter styled the United States, acting for this purpose through Harold L. Ickes, Secretary of the Interior, herein styled the Secretary, under the provisions of the Act of June 16, 1933, (48 Stat., 195), hereinafter styled the National Industrial Recovery Act, and the Act of June 17, 1902 (32 Stat., 388), as amended and supplemented, herein styled the Reclamation Law, and the Casper-Alcova Irrigation District, herein styled the District, an irrigation district duly organized and existing under the laws of the State of Wyoming, having its office at Casper, Wyoming.

Witnesseth that:

Explanatory Recitals.

1. Whereas, the United States through the Secretary, acting by the Bureau of Reclamation under his jurisdiction, proposes to construct in Carbon and Natrona Counties, Wyoming, the Casper-Alcova irrigation and hydroelectric power project for the storage, diversion and beneficial use of the North Platte River for irrigation and the development of electric power, the principal features of said project to be:

(a) The Seminoe reservoir located in a canyon of the North Platte River between Seminoe Mountains and Freezout Mountains about 33 miles northeast of Rawlins, Carbon County, Wyoming, to provide river regulation, power development and an estimated storage capacity of 1,040,000 acre-feet of water.

(b) The Alcova dam and appurtenant structures across the North Platte River in the Alcova Canyon near the

town of Alcova in Natrona County, Wyoming, to act as a diversion dam for the main canal of the project.

(c) The Seminoe power plant, a hydroelectric development, located at the Seminoe reservoir, with an estimated capacity of 51,200 horsepower.

(d) A main canal with an estimated ultimate length of 106 miles and an estimated initial capacity of 1150 second-feet of water.

(e) A general system of laterals and sub-laterals to deliver water to the District's lands.

(f) A general drainage system.

And,

2. Whereas, the expenditure of a maximum of $20,004,254 in the construction of the Casper-Alcova irrigation and hydroelectric project has been authorized under Title II of the National Industrial Recovery Act, conditioned upon the execution by the District of a repayment contract as required under the reclamation law, and

3. Whereas, the United States is the owner of certain permits issued by the State of Wyoming for the diversion, storage, and appropriation of the waters of the North Platte River and its tributaries which said permits provide for the application of the waters of said river to beneficial use for irrigation and domestic purposes upon the lands therein described and for the development of hydroelectric power, and may acquire other permits from the State of Wyoming, for use in connection with said Casper-Alcova irrigation and hydroelectric project, and

4. Whereas, in accordance with the provisions of the allocation for the Casper-Alcova Project under said National Industrial Recovery Act, the prosecution by the United States of the construction of said Casper-Alcova irrigation and hydroelectric project depends upon the Government being assured that said project is reasonably designed to produce revenues sufficient to meet its

current expenditures, and in addition to repay the construction cost of the project within 40 years, and

5. Whereas, engineering and economic investigations made cooperatively by the United States and the State of Wyoming indicate that the 35,000 acres of land of the District for which works will be completed hereunder are possessed of an ability to repay at least $2,800,000 at the minimum rate of $70,000 per year, and

6. Whereas, it is believed that the remainder of the construction cost of the project, after deducing the amount payable under Article 5 hereof, from $20,004,254, the total estimated cost of said project can be repaid to the United States, after completion of said project, from the net earning of the Seminoe power plant, and

7. Whereas, the District was organized for the purposes, among others, of cooperating with the United States in the construction of said project under the Acts of Congress, herein styled the Reclamation Law and the National Industrial Recovery Act, and for the assumption by the District as principal of the indebtedness to the United States on account of the benefit to the project lands irrigable from the irrigation system thereof that were at the time of the organization of the District included in the District or that might be included thereafter:

Now, Therefore, in consideration of the mutual and dependent stipulations and covenants herein contained, it is mutually agreed as follows:

The Casper-Alcova Irrigation District.

8. For the purpose of this agreement, it is understood and agreed that the District comprises two units.

The first unit embraces all those lands situated generally north and west of the North Platte River and south of the middle fork of Casper Creek, and Casper Creek, a more particular description of said first unit being as follows:

T. 30 N., R. 82 W.

Sec. 4, 5, 8, 18, 19.

Sec. 2, 3, 9. (That part which lies north and west of the North Platte River.)

T. 30 N., R. 83 W.

Sec. 24.

T. 31 N., R. 82 W.

Sec. 21, 22, 23, 26, 27, 28, 33, 34, 35.

Sec. 2, 11, 14, 24. (That part which lies north and west of the North Platte River.)

T. 32 N., R. 81 W.

Sec. 3, 4, 5, 6, 7, 8, 9, 17, 18, 20.

Sec. 28, 29, 30, 31. That part which lies north and west of the North Platte River.)—

T. 32 N., R. 82 W.

Sec. 1, 2, 11, 12, 13, 14, 24.

Sec. 25. (That part which lies north and west of the North Platte River.)

T. 33 N., R. 80 W.

Sec. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 28, 29, 30.

T. 33 N., R. 81 W.

Sec. 1, 2, 3, 5, 6, 7, 8, 9, 16, 17, 18, 19, 20, 21, 22, 23, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36.

T. 33 N., R. 82 W.

Sec. 1, 2, 10, 11, 12, 13, 14, 15, 24.

T. 34 N., R. 80 W.

Sec. 4, 5, 6, 7, 8, 9, 16, 17, 18, 19, 20, 21, 27, 28, 29, 30, 31, 32, 33, 34, 35.

Sec. 10, 15, 22, 26, 36. (That part which lies west and south of Casper Creek.)

T. 34 N., R. 81 W.

Sec. 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 21, 22, 23, 24, 25, 26, 27, 34, 35, 36.

T. 34 N., R. 82 W.

Sec. 1, 2, 12.

T. 35 N., R. 80 W.

Sec. 18, 19, 30, 31, 32, 33.

Sec. 20, 29. (That part which lies west and south of Casper Creek.)

T. 35 N., R. 81 W.

Sec. 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 33, 34, 35, 36.

T. 35 N., R. 82 W.

Sec. 11, 12, 13, 14, 15, 25, 26, 27, 34, 35, 36.

The second unit embraces all those lands situated generally north and east of the North Platte River and the middle fork of Casper Creek and Casper Creek, a more particular description of said second unit being as follows:

T. 30 N., R. 81 W.

Sec. 5, 6, 7, 8.

T. 30 N., R. 82 W.

Sec. 1, 10, 11, 14, 15, 16, 17.

Sec. 2, 3, 9. (That part which lies south and east of the North Platte River.)

T. 31 N., R. 81 W.

Sec. 3, 4, 5, 6, 7, 8, 9, 10, 15, 16, 17, 18, 19, 20, 21, 22, 28, 29, 30, 31, 32, 33.

T. 31 N., R. 82 W.

Sec. 1, 12, 13, 25, 36.

Sec. 2, 11, 14, 24. (That part which lies east and south of the North Platte River.)

T. 32 N., R. 81 W.

Sec. 28, 29, 30, 31. (That part which lies south and east of the North Platte River.)

Wyoming Exhibit 3

T. 32 N., R. 82 W.

Sec. 36.

Sec. 25. (That part which lies south and east of the North Platte River.)

T. 33 N., R. 79 W.

Sec. 6.

T. 34 N., R. 78 W.

Sec. 3, 4, 5, 6, 7, 8, 9, 10, 16, 17, 18.

T. 34 N., R. 79 W.

Sec. 1 to 24, inclusive, 28, 29, 30, 31, 32.

T. 34 N., R. 80 W.

Sec. 1, 2, 3, 11, 12, 13, 14, 23, 24, 25.

Sec. 10, 15, 22, 26, 36. (That part which lies east and north of Casper Creek.)

T. 35 N., R. 78 W.

Sec. 19, 29, 30, 31, 32, 33.

T. 35 N., R. 79 W.

Sec. 4, 5, 7, 8, 9, 10, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, 30, 31, 32, 33, 36.

T. 35 N., R. 80 W.

Sec. 6, 7, 8, 9, 13, 16, 17, 21, 22, 23, 24, 25, 26, 27, 28, 34, 35, 36.

Sec. 20, 29. (That part which lies north and east of Casper Creek.)

T. 35 N., R. 81 W.

Sec. 1.

T. 36 N., R. 80 W.

Sec. 30, 31.

T. 36 N., R. 81 W.

Sec. 7, 8, 9, 10, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 33, 34, 35, 36.

T. 36 N., R. 82 W.

Sec. 13, 24, 25.

It is understood and agreed that the first unit of the District, as herein defined, has an estimated irrigable area of 35,000 acres and that it is the intent and purpose of this agreement to provide for the construction of works for the irrigation of the irrigable area of said first unit and to provide further for the repayment of the construction cost of such works by the lands of said first unit as fixed in Article II hereof.

It is further understood and agreed that the second unit of the District, as herein defined, has an estimated irrigable area of 31,000 acres, which area is not to be recognized as coming within the contemplation of any of the terms and conditions of this agreement either as to benefits or obligations, except said second unit is hereby recognized as part of the Casper-Alcova Project, with the right of common benefit to the use and enjoyment of the major project features, which right, however, shall remain suspended pending (a) a determination that an adequate water supply is available for the irrigation of said second unit under the water permit for the Casper-Alcova Project granted by the State of Wyoming (b) the obligating of said second unit to the repayment of its part of the irrigation system construction cost, and (c) the construction of works for the particular benefit of said second unit.

Works to Be Constructed by the United States.

9. The United States will, so far as the expenditures herein authorized permit, construct irrigation works to enable the utilization by the irrigable lands of the first unit of the District of the waters of the North Platte River and its tributaries under the permits heretofore or hereafter granted by the State of Wyoming for the lands of said project. It is expressly understood that the obligation of the United States hereunder shall have been discharged when works are constructed, so far as the expenditure herein authorized will permit, for the irrigation of the irrigable area of the first unit of the District fixed in Article 8 hereof. The basis, the measure, and the limit of the right to the use

of said water supply shall rest perpetually upon the beneficial application, and the use thereof, upon the lands of the first unit of the District.

The District agrees that the project to be constructed hereunder shall be governed, so far as possible by the Reclamation Law. In the distribution of water through the works constructed by the United States, the District shall comply with the provisions of said Reclamation Law and the regulations of the United States promulgated thereunder and in particular the District agrees that, except as provided in Article 39 hereof and until the full payment of the irrigation system construction cost provided for in Article 13 hereof, it will not furnish or deliver to any one landowner water in excess of an amount sufficient to irrigate 160 acres of land.

The United States claims all waste, seepage and percolating water arising within the District and proposes to use such water in connection with the reclamation and development of lands for agricultural purposes in Wyoming and Nebraska under the provisions of the Reclamation Law.

Nothing herein contained shall be construed as requiring the delivery of water for domestic purposes in any year before the commencement or after the close of the regular irrigation season.

It is expressly agreed that the development of the Casper-Alcova Project and the irrigation of lands under it is in no way to impair the water rights for the Federal North Platte Reclamation Project in Wyoming and Nebraska, and the said North Platte Project, and Warren Act contractors under it are to receive a water supply of the same quantity as would have been received if the Casper-Alcova Project had not been constructed and operated.

Proof of Beneficial Use of Water.

10. It is expressly agreed that the United States will, subject to the provisions of the last sentence of Article 9 hereof, keep in full force and effect, in accordance with

the laws of the State of Wyoming, the permits heretofore or hereafter granted by the State of Wyoming to the United States and affecting the water supply of the District. After the transfer of the care, operation, and maintenance of the irrigation works of the project constructed hereunder to the District, it is understood that the District will be responsible for the perfection of its water rights under the laws of the State of Wyoming and to that end the District will submit proof of beneficial use of water under the permits aforesaid and the laws of the State of Wyoming applicable thereto: Provided, That the United States may likewise submit proof of beneficial use under said permits and the laws of the State of Wyoming for any tract or tracts of land within or without the District. All rights secured through or under any certificate of appropriation issued in pursuance of such proof, whether submitted by the District or the United States, shall be regarded as appurtenant to the land for which it shall have been issued and shall be subject to all charges, assessments, penalties, liens, conditions, limitations, restrictions, and forfeitures imposed hereunder, to all intents and purposes the same as if such rights had been appurtenant to such land at the time of the execution of this agreement.

Assessment of Benefits for Construction.

11. The assessment of benefits as provided by Section 973, Wyoming Compiled Statutes, 1920, as amended, is hereby dispensed with pursuant to the provisions of Sections 749 and 750 of Chapter 122, Wyoming Revised Statutes, 1931.

Under the provisions of the Reclamation Law, which the District by agreement has made applicable to the Casper-Alcova irrigation project, the portion of the project construction cost assumed by the District must be repaid to the United States within such terms of years as the Secretary may find to be necessary, in any event not more than forty, except as stated in Article 16.

It is hereby found that the lands of the first unit of

the District as fixed in Article 8 hereof, irrigable from the project works, will be benefitted to a maximum amount of $3,080,000, and the District hereby agrees to levy annual assessments upon its irrigable assessable land of said first unit as fixed in Article 8 hereof sufficient to pay in full to the United States the annual amounts to come due from the District to the United States hereunder, together with such deficiency assessments as may be required to meet estimated or existing delinquencies of those landowners failing to pay their assessments when payable under the State law.

The execution of this contract shall be authorized by a vote of the qualified electors of the District (first and second units as defined in Article 8 hereof) present and voting at an election held for that purpose as provided by law, and thereafter if the electorate of the District vote their approval of this contract, the Board of Commissioners of the District will file promptly in the District Court of Natrona County, Wyoming, a petition praying, in effect, that this contract and the proceedings leading up to the execution of the same, as required by this contract, may be examined, approved, and confirmed by the court. The special proceeding herein agreed to be taken by the Board of Commissioners of the District shall in all things in manner and form be in strict compliance with the provisions of Sections 749 and 750 of Chapter 122, Wyoming Revised Statutes of 1931. The District shall furnish the United States for its files certified copies of all proceedings relating to the authorization of this contract.

Application of the Act of May 15, 1922 (42 Stat., 541).

12. Pursuant to the provision of the Act of Congress of May 15, 1922 (42 Stat., 541) and in order to conform to the provisions of the state revenue laws, it is agreed that the payments to be made to the United States under Articles 13 and 16 hereof, which would otherwise become due and payable from the District to the United States on December 31 of any year, shall be paid in semiannual

instalments, one-half thereof on December 31 of each year and one-half thereof on June 30 of the following year.

Payment of Irrigation System Construction Cost by the District.

13. The District on behalf of the lands of the first unit assumes and agrees to pay to the United States in the manner hereinafter stated the irrigation system construction cost as fixed in Article 11 hereof, which cost is agreed to be a general obligation of the District. The said cost herein assumed by the District shall become due and payable in eighty equal semi-annual instalments of $35,000 each, subject however, to increase under the last paragraph of this article. Said semi-annual instalments of $35,000 (increased under the last paragraph of this article, if such increase is effective) are, however, subject to reduction under Article 16 hereof on account of state-owned and federally-owned irrigable land within said first unit, from which a rental charge with construction component is not collectible. The amount of such reduction in connection with any such semi-annual instalment is to be ascertained by multiplying said semi-annual instalment of $35,000 (increased under the last paragraph of this article, if such increase is then effective) by a fraction whose numerator is the number of acres of land in the said first unit that are state or federally-owned or both, from which a rental charge with construction component is not then being collected and whose denominator is the total number of irrigable acres of land then in said first unit, it being understood that in case of dispute the amount of such deduction is to be conclusively determined by the Secretary.

The first of such semi-annual instalments shall be due on December 31st of the calendar year in which the Secretary shall have given, on or before April 1, public notice to the District that water is actually available from the irrigation works of the project for the reclamation of lands of the District and a like instalment shall be due on each June 30 and December 31 of each year

thereafter until the full irrigation system construction cost of the District has been repaid to the United States. Should the Secretary's public notice be given after April 1 in any year, the initial semi-annual instalment will be due on December 31 of the calendar year following the calendar year in which such notice is given.

The initial instalments of the semi-annual construction charge payments shall be $35,000 each (subject to reduction as above stated on account of non-paying state and federal lands) and the semi-annual instalments of the construction charge shall remain at that amount until the Secretary directs otherwise as permitted in the next sentence. Two million eight hundred thousand ($2,800,000) dollars will be less than the District's equitable pro rata part of the construction expenditures to be incurred by the United States on behalf of the said first unit of the Casper-Alcova Project and the Secretary will after five years' operation of the power plant make a determination (a) whether the irrigable land of the first unit of the District is able to pay more than $70,000 per annum upon the irrigation system construction cost and (b) whether the power plant earnings are accruing at such a rate (interest on the cost of the power system not being considered) as to indicate that such earnings in 40 years may fail, with said $2,800,000, to return the total first unit construction cost, and if he determines that the irrigable land of the first unit of the District is able to pay more than $70,000 per annum and that the power plant earnings will in forty years probably not pay the total project construction cost, minus $2,800,000, he may by notice to the District increase the semi-annual construction charge payments to be made by the District thereafter, on behalf of the lands of the first unit, to the limit, as found by the Secretary, of the ability of the first unit of the District to make annual construction charge payments; provided, however, that in no event, is the District to be required to make any payment upon the power plant construction cost, or any payment on behalf of said first unit in excess of its maximum construction charge indebtedness of $3,080,000.

Construction Cost of Seminoe Power Plant.

14. It is expressly understood and agreed that the Seminoe power plant and the earnings therefrom shall be the property of the United States. It is further understood that the District is not to share in any event in any of the earnings resulting from the construction and operation of the Seminoe power plant by the United States.

Assessment by District.

15. Pursuant to the provisions of the laws of the State of Wyoming, and of the United States, and regulations established thereunder, and the terms of this agreement, the District will cause to be levied and collected all assessments against the tracts of land, now or hereafter included in the first unit of the District and benefitted by the results of this contract necessary to meet the terms of this agreement, and will use all the powers and resources of the District, including the taxing power and the power to withhold delivery of water, to collect and pay to the United States all charges authorized under this agreement in full on or before the day that the same become due. As some of the landowners of the District may fail to pay their irrigation taxes when due, the District will levy deficiency assessments upon all of the assessable irrigable land within the first unit of the District so that the full sums due the United States hereunder may be paid to the United States when due. If, notwithstanding such levy and collection of deficiency assessments, the collections and revenues of the District should be insufficient to enable it to meet its current obligations to the United States under this contract, the District shall include a deficiency levy in its next assessment, estimated to be sufficient, together with the current normal levy, to raise funds to pay both the delinquency for prior years, with interest, and the current instalments payable from such levy.

Lands Owned by the State of Wyoming.

16. Included within the boundaries of the first unit

of the District are 1,936 acres of irrigable land, the title to which is vested in the State of Wyoming and which lands, because of the status of their title, cannot, under the laws of Wyoming, be assessed by the District for the payment of construction cost or operation and maintenance charges. With respect to said lands, the District is authorized to deliver water thereto upon the payment, by the State or any person in lawful possession thereof, of an annual rental charge (to be approved by the Secretary) which shall be composed of a construction charge component in the amount of at least $2.00 per irrigable acre and an operation and maintenance charge component in the amount of the current operation and maintenance levy fixed by the Board of Commissioners of the District for the similar lands of the District in an assessable status. It is agreed that the District, acting through its Treasurer, shall be the fiscal agent of the United States for the collection and payment to the United States of the construction charge component of said rental charge. The operation and maintenance charge component shall be retained by the District for its own use and benefit. Collections by the District of the construction charge component shall be paid to the United States as soon as collected and be credited upon the District's semi-annual construction charge instalment next thereafter coming due to the United States under Article 13 hereof. Irrigable land in the first unit belonging to the State or the United States, on behalf of which construction charges are not being paid either from rentals or assessments, will be referred to hereinafter as non-paying land.

In order to permit the Treasurer of the District to perform the duties of such fiscal agent, he shall be required to furnish a surety bond in a penal sum fixed by the Secretary and conditioned upon the performance of the duties of such office under the terms of this contract and the laws of the United States, the premium of said bond to be paid by the District. The District agrees that upon the payment to the United States of said construction charge component, it will credit the

same to the land entitled to receive water because of the payment thereof.

It is further agreed that the semi-annual instalments of $35,000 payable by the District to the United States hereunder (increased, if such increase is effective, under the last paragraph of Article 13) shall be reduced by the proportion thereof, as stated in Article 13, which the acreage of non-paying land bears to the total irrigable area of said first unit, the amount of such deduction to be conclusively determined by the Secretary in any instance when a dispute may arise. The total of all such reductions, as conclusively determined by the secretary in case of dispute, is to be assessed upon and collected from such non-paying land as and when it becomes subject to assessment or to rental charges with construction component. The District agrees, as soon as possible, to begin the levying of assessments upon or the collection of rentals, with construction charge components from any initially non-paying land. When each such tract of land becomes assessable, the District will levy annual assessments thereon, so that payment of such tract's proportion (as determined by the Secretary in case of dispute) of the first unit's construction charge indebtedness to the United States may be completed in 40 years, the number of years in which a rental charge with construction component has been collected from such land, being considered a part of such 40 year period. It is understood that for such initially non-paying land, the forty year period for the payment of construction charges will extend beyond the 40 year period for the first unit generally. Nothing herein contained is to debar the District from assessing construction charges at a higher rate per acre upon the better land of the first unit than upon the poorer land.

Failure of the District to Levy Assessment.

17. The United States reserves the right to cancel this agreement if the District fails to levy any assessment called for herein. Upon such cancellation any construction charges theretofore paid to the United States on

behalf of the lands of the first unit of the District shall become the property of the United States as part compensation for any benefits the District may theretofore have received from the said Casper-Alcova Project. The provisions of this paragraph are not exclusive and shall not in any manner hinder the United States from exercising any other remedy to enforce collection of any amount due the United States under the terms of this agreement.

Public Lands Subject to Assessment.

18. Pursuant to the provisions of Section 3 of the Act of May 15, 1922 (42 Stat., 541), the unentered public lands and entered lands for which no final certificate has been issued, located within the first unit of the District, and described in a statement marked Exhibit "A" attached hereto and made a part hereof, are hereby designated as subject to the provisions of the Act of August 11, 1916 (39 Stat., 506); Provided, That unentered public land, while in that status, shall not be assessed by the District for any purpose.

All Benefits Conditional Upon Payment.

19. Should any assessment or assessments authorized by the terms of this agreement and levied against any tract of land in the first unit of the District be held illegal or void, or the District or its officers be enjoined or restrained from making or collecting any assessment provided for herein from any tract of land in the first unit of the District at the instance of the owners or holders of such tract of land, then such tract shall have no right to any of the benefits of this contract and no water furnished through any works constructed by the United States shall be delivered to or for such tract, or tracts of land, until construction and operation and maintenance charges on the terms and conditions provided for herein shall have been paid by the landowners to the District, and by the District to the United States in the case of charges agreed to be paid to the United States. It is further agreed and understood that the

payment of construction and operation and maintenance charges on the terms and conditions provided for herein is a prerequisite to the right to receive water from any of the works constructed by the United States and no irregularity in levying assessments by the District, or lack of authority in the District, whether affecting the validity of District assessments or not, shall be of any effect to authorize any landowner of the first unit of the District to demand or receive water made available through irrigation works constructed by the United States unless construction and operation and maintenance charges, on the terms and conditions provided herein, have been paid by such landowner.

Operation and Maintenance Charges to Be Uniform.

20. Operation and maintenance charges levied by the District shall be uniform per irrigable acre as to all lands of the first unit of the District, and each irrigable acre of such land for which the required payments have been made shall be entitled to the delivery of its proportionate share of the water supply made available for the first unit of the District under the provisions hereof. The District shall require the payment of operation and maintenance charges in advance of the delivery of water.

Lands Which Become Non-Irrigable.

21. If the Secretary shall find any lands of the first unit of the District temporarily incapable of successful cultivation, on account of seepage, alkaline conditions or for any other reason, he may exempt the District from the payment of construction charges for such lands for a specified period, or until further notice; whereupon the District shall exempt such lands from assessments and levy during such period. Nothing herein contained shall be so construed as to deprive the Secretary of discretionary power with respect to the exemption of the District from the payment of charges against any tract, or as to release the District from any of its liability for the reimbursement of the United States for the full proportionate share of the cost of the project works allo-

cated to the first unit of the District or as to relieve the District of any landowner of the first unit thereof from any part of their duty to use, care for, and dispose of irrigation water in a diligent, prudent, economical and careful manner.

Refusal of Water Because of Default or Delinquency.

22. The United States reserves the right to refuse to deliver water to the District in the event of default by the District for more than twelve months in any of the payments due the United States hereunder. This provision is not exclusive and shall not in any manner estop the United States from exercising any other remedy to enforce collection of any amount due hereunder.

No water shall be delivered by the District to or for any tract of land in the first unit of the District, the owners or holders of which shall be delinquent under the State law more than twelve months in the payment of any annual charge due the United States or of any assessment levied by the District for the purpose of paying such charges.

The District is authorized, if it so desires, to require payment of operation and maintenance charges in advance as a toll charge and to withhold delivery of water until full payment thereof is made.

Penalty for Delinquency in Payment.

23. Upon every instalment of money required to be paid under this agreement to the United States, and not paid when due, interest shall be added at the rate of six per cent per annum until paid.

Limitations Regarding the Drainage System.

24. It is agreed that a complete drainage system adequate to meet all future requirements cannot be extended by the United States to each farm unit within the limit of the amounts designated in Articles 11 and 13 hereof, but that a general system, within the limits of the expenditures provided for herein, with which individual

and community farm drains can be connected, is proposed to be constructed by the United States hereunder. It is further agreed that the United States does not guarantee that all or any of the drains to be constructed will be sufficient for the purpose intended.

Rights-of-Way.

25. The United States, in constructing the project, will utilize all legal and valid reservations of rights-of-way held by or reserved to the United States under acts of congress or otherwise, but the District upon request of the United States shall secure releases in favor of the United States of all claims for damages to improvements on such right-of-way and of all claims for past or prospective damages to highways. The District, upon request of the United States, shall acquire by condemnation, or otherwise, all further easements, rights-of-way, and lands needed for the proposed project works or any feature thereof: Provided, that the cost of securing such releases and of acquiring further easements, rights-of-way and lands, if such cost is found reasonable by the Secretary, shall be paid by the United States, if funds are available therefor.

The District, after the transfer to it of the irrigation works under Article 26 hereof, may, so far as legally permissible, utilize for any works being constructed by the District any rights-of-way held by the United States or reserved under acts of Congress or otherwise, any and all expenses growing out of such utilization of Government right-of-way to be borne by the District.

Operation and Maintenance Transferred to District.

26. Effective December 31st of the calendar year in which the Secretary on or before April 1 gives public notice to the District that water is actually available from the project works for the reclamation of the lands of the first unit of the District except as provided in Article 32 hereof, there is hereby transferred to the District the care, operation, and maintenance of the irrigation and drainage works of the project together with all appur-

tenances thereto, including canals, laterals, sub-laterals, drains, and all structures thereon or appurtenant thereto.

Effective as of the date of such transfer, the District hereby accepts the care, operation, and maintenance of the works transferred and will operate and maintain the same and deliver water therefrom in full compliance with the Reclamation Law as it now exists or may be amended hereafter, the regulations of the Secretary now in force and hereafter made thereunder, and the terms of this agreement and any other agreement in force affecting the works herein transferred, in such manner that said works shall remain in a good and efficient condition for the development, diversion and distribution of irrigation waters. The District will use all proper methods to secure the economical and beneficial use of irrigation water.

The District agrees that the care, operation and maintenance of the works herein transferred shall be without expense to the United States.

The title to the works herein transferred shall not pass from the United States.

Keeping Transferred Works in Repair.

27. No substantial change in any way of the works transferred to the District under Article 26 hereof, shall be made by the District without first obtaining the written consent of the Secretary. The District shall make promptly any and all repairs to the transferred works, which, in the opinion of the Secretary, are deemed necessary for their proper care, operation, and maintenance. If at any time, in the opinion of the Secretary any part of the transferred works, from any cause, shall be in a condition unfit for service, he may order the water turned out and shut off until, in his opinion, such property is in proper condition for service. In case of neglect or failure of the District to make such repairs, the United States at its option, may take back the care, operation, and maintenance of the transferred works, or may cause the repairs to be made and charge the cost thereof to the District, which cost the District shall pay to the United

States promptly upon receipt of notice from the Secretary of the amount thereof.

District Releases Certain Claims.

28. After the transfer of the works hereunder, as provided in Article 26, the District shall hold the United States, its officers and agents, harmless as to any and all damages which may in any manner grow out of the care, operation, and maintenance of said works.

Irrigation Superintendent.

29. Until completion of payment to the United States of the irrigation system construction cost of the District, the District will employ as project manager or superintendent a competent person who shall have had experience in the operation of similar irrigation works. The selection of said person shall be subject to the approval of the Secretary. Upon notice from the Secretary that said project manager or superintendent is, or has become, unsatisfactory the District shall promptly, and as often as such notice is given, terminate the employment of such unsatisfactory employee and employ one acceptable to the Secretary.

Transfer of Equipment and Supplies to the District.

30. Equipment and supplies on hand and no longer needed by the United States will be transferred to the District at the time the operation and maintenance of the project works is transferred to the District, and the book value of any transferred property theretofore purchased with the Government funds and not theretofore charged to he irrigation system cost of the District, as shown by the project records, will be paid by the District to the United States at the rate of 10 per cent thereof per annum commencing on December 31 of the first calendar year after the works are transferred. A list of equipment and supplies on hand at the date of the transfer or the operation and maintenance to the District will be furnished the District and the value stated thereon will be the basis of the charge. The title to all property transferred hereunder shall pass to the District.

Inspection by the United States.

31. The Secretary shall cause to be made from time to time a reasonable inspection of the works transferred to the District to ascertain whether the terms of this contract are being satisfactorily executed by said District. Such inspection shall include examination of the transferred property and the books, records, and papers of the District, together with examination in the office of the Bureau of Reclamation of all contracts, papers, plans, records, and programs connected with the said property. The estimated expense of such inspection as found by the Secretary shall be paid by the District to the United States as provided in Article 33.

Control of Dams and Reservoirs.

32. It is understood and agreed that the control and operation and maintenance of the Seminoe dam and reservoir and the Alcova dam and reservoir, together with all appurtenances thereto necessary for the operation of said features, and the title thereto, shall remain at all times in the United States.

Payment of Operation and Maintenance Cost of Dams and Reservoirs and Appurtenant Works, and Inspection, Repairs, General Expense and Other Services.

33. The District annually shall pay in advance on December 31 to the United States the necessary funds to defray for the calendar year following (a) the proportionate part, as determined by the Secretary, of the cost of operating and maintaining the Seminoe dam and reservoir and Alcova dam and reservoir and the appurtenant works necessary for the operation of said features properly chargeable to the District in connection with the furnishing by the United States of the water supply for the first unit of the District, which determination of the Secretary shall be final and binding upon the parties hereto, and (b) an equitable charge, as determined by the Secretary each year, to cover the general expense and the cost of bookkeeping, accounting, clerical, and legal work of the Bureau of Reclamation in connection with the accounts

and collections of said project and all inspections under Article 31 hereof during the calendar year for which such advance is made.

The Secretary shall notify the District on or before April 1 of the calendar year in which he gives the District the notice, for which provision is made in Article 26 hereof, of the amount required to be paid by the District hereunder for the then following calendar year, and the District will pay said amount to the United States on December 31 of the same year in which the notice is given. A similar notice shall be given by the Secretary to the District on April 1 of each year thereafter and the amount stated therein shall be paid by the District to the United States on December 31 of each year in which such notice is given. It is understood that the notices, for which provision is made herein, shall be based upon an estimate of the cost of the service to be performed by the United States and that should such estimate prove to be insufficient to cover the actual cost of the service performed the United States will notify the District immediately upon ascertaining such fact and the District thereupon will pay promptly such deficit to the United States. Should the estimate paid by the District prove to be greater than the actual cost, the Secretary will advise the District in the notice next given and the excessive amount paid by the District under the last previous notice will be credited by the United States on account of the amount of such estimated cost next coming due to the United States from the District.

Secretary to Approve Bond of Treasurer.

34. After the transfer of the project works to the District under Article 26 hereof, the Secretary shall approve the amount of the bond required to be furnished by the treasurer of the District and no person shall be authorized to act as treasurer or to handle any of the funds to be collected or disbursed by the District without furnishing a surety bond in a penal amount approved by the Secretary and conditioned upon the faithful performance of the duties of his office under the laws of Wyoming and the terms of this contract.

Records to be Kept by District.

35. The District shall (a) install and maintain a modern set of books of account to be acceptable to the Secretary, showing all the financial transactions of the District, and furnish such financial reports and statements as may be required from time to time by the Secretary; (b) keep each year a careful and accurate record of the water supply and the disposition of the same, and furnish such detailed reports concerning the same as may be required by the Secretary; and (c) keep and report such other records as the Secretary may require and in the manner and form he may require.

Access to Books and Records.

36. The proper officials of the District shall have full and free access to the project books and official records of the Bureau of Reclamation so far as they relate to the matters covered by this contract, with the right at any time during office hours to make copies of and from the same, and the representative of the United States shall have the same right in respect to the books and records of the District.

Contracts Made by the District Affecting the Casper-Alcova Project.

37. No contract affecting the project, made by the District, except for the usual labor, equipment, supplies, and service in connection with the operation and maintenance of the works transferred hereunder, and the delivery and distribution of water therefrom shall be valid until approved by the Secretary, and a draft of such contract shall be submitted to the Secretary for approval as to form before execution.

Valuation of Land and Application of Proceeds of Sale.

38. (A) No part of the water supply provided through irrigation works constructed under the provisions of this agreement shall be delivered to or for any district lands, except lands whose owners, for themselves, their heirs, successors and assigns, shall have executed and de-

livered recordable contracts, the form to be approved by the Secretary, accepting the terms and conditions of this agreement, and agreeing that their lands shall be bound by all the terms and conditions thereof, and particularly the terms set out in this article. The United States may reduce the amount of water provided to be delivered to the District to the extent of the water supply which would have been furnished to or for any lands not subscribed to such recordable contracts had they been subscribed.

(B) The amount in dollars, by which the price fixed in any future sales of the District land, exceeds the sum of (a) the appraised value of the land (as determined by the appraisal provided for in subdivision C of this article); (b) the appraised value of the improvements thereon, if any, (determined as provided in subdivisions C and F of this article); (c) payments, if any, made to the United States on the construction charges upon such lands; and (d) twice the amount of the payments, if any, made to the District under this article upon any previous sale or sales of such lands, shall for convenience or reference be termed the "Incremented value" of said land.

(C) The value of the irrigable lands within the District boundaries shall be determined by a board of appraisers consisting of three members which has been appointed by the Secretary. In appraising such lands no speculative value shall be given thereto on account of the prospective possibility of securing water through the said works proposed to be constructed by the United States, but the same shall be appraised on the basis of such value as they would have without such prospects of water from said proposed works; it being understood that improvements on the lands, including existing irrigation works and water rights at the time of said appraisement will be appraised separately.

(D) The United States shall not be obligated to perform under this agreement until the appraisal provided for herein is approved by the Secretary.

(E) The cost of said appraisal shall be paid for by

the United States as part of the irrigation system construction cost fixed herein.

(F) The owner or owners of the lands which, after such appraisals, are improved by the construction of buildings, fences, or other structures, or by leveling, ditching, clearing, or the seeding of grass, clover, or alfalfa, or the planting of trees, or by the making of other improvements, may have such improvements or betterments, so placed upon said lands after said appraisements, appraised by a board of appraisers designated by the Secretary, upon payment to the District of the estimated cost of making such appraisal of improvements.

(G) Upon the sale of any land within the District, the vendor and vendee shall file with the Secretary of the District a statement executed by both, under oath, describing the land and showing the amount of the purchase price of said land and giving the details of said transactions. After any sale, transfer, or trade of such land, no water shall be furnished therefor until such statement, under oath, has been filed and the payment herein provided for made to the District to apply on the water right of said tract of land. It is understood and agreed that such land shall not be traded or transferred for other than a money consideration, nor upon an instalment contract, unless a sufficient cash payment be made to cover the payment to be made to the District as herein provided, and that any such trade or transfer for other than a money consideration, or without a sufficient cash payment to pay the amount provided herein to be paid to the District, shall immediately suspend the right of such tract of land to receive water from the works constructed by the United States until such land shall be reconveyed to the former owner or sold for a money consideration to another vendee and payment made to the District as herein provided.

(H) This agreement shall be recorded in the office of the County Clerk of Natrona County, Wyoming, and shall be notice to all landowners of the District, and all future purchasers of land in the District, that the right

to receive water from any works constructed by the United States is conditional upon compliance with the terms and conditions herein set out.

(I) If any of the lands of the District are sold at an incremented value, as defined in subdivision B of this article, the vendor and vendee, jointly and severally, shall pay to the District from the full or partial payment of consideration to be paid by the vendee an amount equal to fifty per centum (50%) of such incremented value. If a partial payment of consideration is made, it must be sufficient to make the payment required herein. Any agreement between the vendor and vendee directly or indirectly contravening the provision of this subdivision shall be void as to the rights of the United States and the District.

(J) Such payment shall be credited on the books of the District to such tract of land so transferred as an advance payment of future construction and operation and maintenance charges in the following manner:

First: On any construction charges or assessments coming due during the first year after said payment.

Second: On any operation and maintenance charge over one dollar ($1.09) per acre coming due the first year after said payment.

Third: Then, if any money remains, on the construction charge, and then on the operation and maintenance charge in excess of one dollar ($1.00) per acre coming due the second year following said payment; and then in the same manner upon the construction charges and operation and maintenance charges in excess of one dollar ($1.00) per acre for subsequent years as long as the credit lasts.

(K) In the case of any additional sale, at a price in excess of the price paid at a previous sale, in connection with which previous sale the amount provided for herein has been paid to the District, the showing made by statement under oath, the conditions and the penalties in con-

nection therewith shall be the same as provided above with reference to the first sale.

(L) The provisions of this article shall apply to any and all transfers and contracts for the transfer of lands in the District until all construction charges due the United States shall have been paid.

(M) The amounts so collected or received by the District on account of such sales of District lands, at incremented values, shall be kept in a special deposit, secured by corporate surety bond, and shall be promptly applied to the payment of charges as provided in this article as the same come due from time to time.

(N) Lessee and crop share contracts of lands in the District, with option to purchase or other provision for transfer of title to the lessee, or crop share tenant, will be treated as agreements to sell, and the rental payments or crop share payments provided therein will be considered part of the purchase price.

(O) The District will keep a record of transfers of land and agreements to sell by monthly inspection of the County records, or abstractor's records, or other suitable means of securing such information, and when transfers or agreements to sell or convey appear of record, or otherwise come to the attention of the District officers, they shall discontinue or refuse to begin delivery of water to such land until the conditions of this agreement have been complied with by the filing of the affidavits provided for herein and the making of the required payment to the District, if payment is required under the terms of this agreement.

(P) Rules and regulations for the purpose of carrying out and enforcing the provisions of this agreement may be adopted by the Secretary, and the District will comply with such rules and regulations, and for the purpose of carrying out the provisions of this contract, will adopt rules and regulations of its own not in conflict with those established by the Secretary. It is agreed and understood that such rules and regulations may include rules and reg-

ulations of the following requirements designated as subdivision (Q) of this article, or any part thereof, to-wit:

(Q) That each year, prior to the delivery of water to any tract of land in the District for which water service is desired, the District shall require from the owner thereof, or the duly authorized agent or representative of the owner, a card or other form of application for water service containing an affidavit setting out what, if any, sales, transfers, or agreements for the sale or transfer of the land described therein have occurred since the last application for water service on said land was filed, or in case of no previous application having been filed since the appraisement thereof provided for herein was made. The District will furnish to the Secretary either copies of such applications and affidavits or a statement of the information contained therein, together with a reference to any transfers of or agreements to transfer District land which is not reported in such applications but which has come to the attention of the District officers through inspection of the county records or otherwise and a list of the lands delinquent more than one year in the payment of any assessment, such information to be furnished to the Secretary for his guidance in determining the amount of water to be delivered to the District by the United States. No land in the District shall be entitled to receive water any year until such application and affidavit have been filed with the District.

(R) It is agreed that the appraisement provided for in subdivision (C) of this article shall be filed in the office of the County Clerk of Natrona County, Wyoming, and that the District, at its expense, shall give notice of the filing of said appraisement by publication in a legal newspaper of general circulation in said Natrona County, Wyoming, for three consecutive weeks, the first of which publications shall be not more than one week from the date of filing said appraisement. The said notice shall state the appraisement has been filed with said County Clerk, that it is open to inspection by all persons interested, and that if objections are not filed in the office of

the Bureau of Reclamation at Casper, Wyoming, within thirty (30) days from the date of last publication of said notice, the appraisement, as filed, will be approved by the Secretary. Objections filed will be considered by the board of appraisers and a report thereon made to the Secretary for decision, and the decision of the Secretary shall be final and binding upon all parties in interest.

(S) Adjudication of invalidity of Articles 38 and 40 of this agreement, or any part of said Articles, shall not impair or otherwise affect the validity of any other of the Articles hereof: Provided, However, that the Secretary may refuse to proceed with the work of constructing the project if said articles are adjudicated to be invalid.

Sale of Excess Lands.

39. In this article the term "Large Landowner" is used to denote a single landowner having the beneficial ownership of more than 160 acres of irrigable district land, and the term "Large Ownership" will be used to denote the ownership of more than 160 acres of irrigable land by a single owner. Each large landowner shall be given a period of 80 days after date of notice from the United States to designate upon which 160 acres of his holdings he desires to apply the water to be obtained under this contract for non-excess land. Should he fail to manifest his selection within such period the designation will be made by the District or by the Secretary, if the District fails to act within such period as the Secretary may consider reasonable. All lands in excess of such 160 acres shall be considered as excess land and so designated in this article. Such excess land shall be appraised in a manner to be prescribed by the Secretary and the sale prices thereof fixed by the Secretary on the basis of its actual bona fide value at the date of appraisal without reference to the proposed construction of the irrigation works. No excess land while held in large ownership shall receive water from any project or division if and while the owner thereof shall refuse to execute a valid recordable contract for the sale of such lands under terms and conditions satisfactory to the Secretary and at prices

not to exceed those fixed by the Secretary. Until at least one-half the construction charges against excess lands shall have been paid (in cases where the large landowners by executing such recordable contracts permit the delivery of water to the excess land), sales of such excess lands may be made at prices not to exceed the appraised value and such sales shall carry the right to receive water, but no sale of any such lands at a price exceeding the appraised value shall carry the right to receive water and said recordable contracts with large landowners shall so provide. Upon proof of fraudulent representation as to the true consideration involved in such sales, the Secretary is to be authorized in such recordable contracts to cancel the water right attaching to the land involved in such fraudulent sales. Excess land after the owner thereof shall have executed such recordable contract and after the payment of one-half of the construction charges thereon (as determined by the Secretary) shall be subject to Article 38 of this contract.

Excess Land Subject to Assessment Whether Entitled to Water Delivery or Not.

40. It is agreed and understood that all excess land, during the time that such land is not entitled to receive water as well as during the time it is entitled to receive water, shall be subject to District assessments, both for construction and operation and maintenance purposes, as the other irrigable lands of the District, notwithstanding the fact that such land may not be entitled to the delivery of water until the owner thereof has complied with the provisions of this contract applicable to sale of excess land. The District shall assess excess land both for construction and operation and maintenance purposes at the same rates applicable to other similar irrigable lands of the District. The delay or refusal of the owner of such land to execute the valid recordable contract for the sale of such land, provided for in this agreement, or the neglect or refusal of such owner of excess land to carry out the provisions of such recordable contract after the execution thereof, and the resulting inability to secure water de-

liveries for such excess land, in no way shall exempt such land from District assessments. The inability to secure water deliveries for such excess land under the provisions of this contract, shall not lessen or modify the liability of such land for District assessments, which assessments shall be levied against such land by the District in the same manner and at the same rates applicable to similar irrigable lands in the District, which at such time are entitled to and are receiving water deliveries.

Validity of Contract Not Affected.

41. Adjudication of invalidity of any article of this agreement, or any part thereof, shall not impair or otherwise affect the validity of any other of the articles hereof.

Secretary May Make or Modify Regulations.

42. There is reserved to the Secretary the right, in his discretion to make regulations and to modify the same in general harmony with this agreement, to the end that the true intent of the law and of this agreement shall be carried into full effect.

District to Receive Benefit of Subsequent Legislation.

43. The District shall receive the benefit of any future legislation enacted by the Congress in the same manner and to the same extent as though this agreement had not been made.

Change in Organization of District.

44. While this agreement is in effect, no change will be made in the organization of the District, either by the inclusion or exclusion of lands, or by consolidation or merger with other Districts, or by proceedings for dissolution, except upon the written assent thereto of the Secretary.

Board of Commissioners of the District Authorized to Execute Amendatory or Supplemental Agreements.

45. The authorization of the execution of this agreement by the electors of the District shall empower the Board of Commissioners of the District, and their suc-

cessors in office, by proper resolution and without further authorization from the electors of the District, to execute, with the United States, any agreements amendatory of or supplemental to this agreement which, in the judgment of the Board, shall be for the benefit of the District: Provided, That no such amendatory or supplemental agreement shall increase the amount of the indebtedness of the District to the United States beyond that herein authorized.

Agreement Subject to Appropriations by Congress.

46. This agreement is subject to appropriations being made by Congress from year to year of sufficient funds to carry on the work provided for herein. No liability shall accrue against the United States by reason of failure to make any such appropriations.

Member of Congress Clause.

47. No Member of or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom. Nothing, however, herein contained shall be construed to extend to this contract, if made with a corporation for its general benefit.

In Testimony Whereof, the parties hereto have hereunto affixed their names the day and year first above written.

THE UNITED STATES OF AMERICA
By .....
Secretary of the Interior
CASPER-ALCOVA IRRIGATION DISTRICT
By .....
President

Attest:

.....
Secretary.

WYOMING EXHIBIT 7.

PHOTOSTATIC COPY

Of Order Record Book 8, Pages 126 to 158, Inclusive. Records of State Board of Control, State of Wyoming, Cheyenne, Wyoming. Re Adjudication of Water Rights from North Platte River for Lands Embraced in the Goshen Irrigation District.

ORDER RECORD 8—STATE BOARD OF CONTROL.

Proofs Under Permits Nos. 609 Reservoir, 18544, 3905 Reservoir, 5014 Enlargement, and 4883 Enlargement, in Water Division No. One. (Goshen Irrigation District, Wyoming.)

North Platte and Laramie Rivers.

Findings and Order.

This matter coming regularly before the State Board of Control this 23rd day of November, 1935, the Board Finds:

That the Goshen Irrigation District of Torrington, Wyoming, has submitted before the State Engineer sworn proofs of appropriation of water from the North Platte River under Permits Nos. 609 Reservoir, 18544, 3905 Reservoir, 5014 Enlargement and from the Laramie River under Permit No. 4883 Enlargement, on behalf of the individual owners of lands in Goshen County, Wyoming, lying under and irrigated through the Fort Laramie Canal;

That under the terms of a contract entered into between The United States of America and the Goshen Irrigation District, dated the 4th day of November, 1926, the said District has acquired an interest in Permits Nos. 609 Reservoir, 18544, 3905 Reservoir and 5014 Enlargement and the constructed works authorized thereby, sufficient for the adjudication of rights under the Fort Laramie Canal, a certified copy of which contract is on file in the office of the State Board of Control;

That all of said proofs were open for public inspection at the office of the State Board of Control, State Capitol

Building, Cheyenne, Wyoming, on the 28th and 29th day of October, 1935, between the hours of 9:00 o'clock A. M. and 4:00 o'clock P. M. on each of said days;

That all of said proofs, together with a notice of the above date and place of public inspection, were advertised in a newspaper of general circulation in the community where the said appropriations are situated, according to law.

The Board, having now examined all and singular the records in connection with the permits under which the said proofs of appropriation of water have been submitted, and the proofs of the beneficial use of water thereunder by each appropriator as presented and filed in the office of the State Board of Control, Further Finds:

That all the requirements of law and the rules and practice of the State Board of Control in such matters have been fully complied with in the taking and submission of said proofs;

That no contests were filed against any of the said proofs of appropriation of water;

That each of the said proofs designates a lawful purpose for which water was applied to beneficial use, and that the terms of the several permits granted by the State Engineer were regularly complied with;

That each of the said appropriations as tabulated below is included under the four permits Nos. 609 Reservoir, 1854[illegible], 3905 Reservoir, and 5014 Enlargement, and, with the exceptions of the appropriations for the irrigation of certain lands in Sections 16, 17, 18, 21 and 22, Township 26 North, Range 64 West, as noted in the tabulation included in this order below, are also under Permit No. 4883 Enlargement, being a supplemental supply for said appropriations diverted from the Laramie River;

That the dates of priority of the said appropriations under each of said permits is as follows:

Permit No. 609 Reservoir, right of storage in the Pathfinder Reservoir, December 6, 1904;

Permit No. 18544, right to the use of natural unstored flow of the North Platte River and secondary right for beneficial use of waters stored in the Pathfinder Reservoir, December 6, 1904;

Permit No. 3905 Reservoir, right of storage in Guernsey Reservoir, April 20, 1923;

Permit No. 5014 Enlargement, filed April 12, 1935, secondary right for beneficial use of waters stored in the Guernsey Reservoir under priority of April 20, 1923;

Permit No. 4883 Enlargement, right to the natural unstored flow of the Laramie River for supplemental supply for lands under Permits Nos. 18544 and 5014 Enlargement, January 20, 1932;

That the names of the several appropriators, the maximum amounts of the appropriations of water under the right to use the natural unstored flow of the North Platte and Laramie Rivers, the use for which it is appropriated, the acreage and legal subdivisions of the land on which water is appropriated for irrigation for irrigation is used and to which said use is attached, are as set forth in the following table, which is hereby made a part of this decree.

* * * * *

ORDER RECORD 8—STATE BOARD OF CONTROL

It Is Therefore Ordered by the State Board of Control that the dates of priority of said appropriations under the said several permits shall be as above found, and the names of the several appropriators, the maximum amount of each of said appropriations under the right to use the natural unstored flow of the North Platte and Laramie Rivers, the beneficial uses for which the water has been and is to be applied, the acreage and description of the lands in each case to which water appropriated for irrigation is applied and to which said use shall attach, are, and are hereby Decreed to be the same as set forth in the foregoing tabulation.

It Is Further Ordered and Decreed that each of the foregoing several appropriators do have the use of water

under the said Permits, with the priorities as found above, and in the amounts and for the beneficial purposes stated in the foregoing tabulation.

Provided, However, And It Is Hereby Ordered that the right to the direct use of the natural unstored flow of the North Platte River, or that flow as supplemented by the direct use of the natural unstored flow of the Laramie River, shall not exceed the statutory limit of one cubic foot of water per second of time for each seventy acres irrigated, and that all appropriations of water shall be limited to the actual quantity of water which is beneficially applied to the uses herein determined.

It Is Further Ordered that certificates of appropriation of water be issued to each of said appropriators in accordance with the foregoing table.

In Witness Whereof, the President of the State Board of Control has hereunto set his hand this the 23rd day of November, 1935.

STATE BOARD OF CONTROL,
By EDWIN W. BURRITT,
President.

Attest:
JOHN D. QUINN, Ex Officio Secretary.
Entered: March 11, 1936.

WYOMING EXHIBIT 8.

The State of Wyoming.

Certificate of Appropriation of Water.

Proof No. 21311, Page 1.

Farm Unit Number 2.

Certificate Record No. 54, Page 250.

Whereas, C. W. Fellows has presented to the Board of Control of the State of Wyoming proof of the appropriation of water from the North Platte River through the Fort Laramie Canal, the Pathfinder Reservoir and the Guernsey Reservoir under Permits Nos. 18544, 609 Res., 5014 Enl. and 3905 Res., and Supplemental Supply from Laramie River through the Enlargement of the Laramie River Diversion Canal, Permit No. 4883 Enl., and the applications therefor including the General Statement filed therewith and made a part thereof, for the irrigation of the lands herein described, lying and being in Goshen County, Wyoming.

Now Know Ye: That the Board of Control, under the provisions of Chapter 122, Wyoming Revised Statutes 1931, Sections 418 and 1501, by an order duly made and entered on the 23rd day of November, 1935, in Order Record 8, Page 126, has determined and established the priority and amount of such Appropriations as follows:

Name of Appropriator C. W. Fellows; Post Office Address Lyman, Nebraska.

Amount of Appropriation: (a) One (1) cubic foot per second of time for each seventy (70) acres of irrigable land, said appropriation to be supplied from the natural flow of the North Platte River. (b) Supplemental supply from the Pathfinder Reservoir and the Guernsey Reservoir or any combination of said sources of supply. (c) Supplemental supply from Laramie River through the Enlargement of the Laramie River Diversion Canal;

Date of Appropriation: Natural flow of the North

Platte River, December 6, 1904; Right of storage in Pathfinder Reservoir, December 6 1904; Right of storage in Guernsey Reservoir April 20, 1923; Natural flow as supplemental supply from Laramie River, January 20, 1932;

Description of Land to be Irrigated and for Which This Appropriation is Determined and Established: 20 A. NE¼ NE¼ (L. 1), Sec. 4; 26 A. NW¼ NW¼ (L. 4), Sec. 5, T. 21 N., R. 60 W.

Total Acreage: Forty-six (46) acres.

The right to the use of water hereby confirmed and established is limited to irrigation and domestic use, and is subject to all the terms, conditions and limitations of the Constitution and laws of the State of Wyoming governing the appropriation of water and applicable contracts with the United States of America made pursuant to the Act of Congress of June 17, 1902 (32 Stat., 388), as amended and supplemented, known as the Federal Reclamation Law.

In Testimony Hereof, I, Edwin W. Burritt, President of the State Board of Control, have hereunto set my hand this 1st day of July, A. D. 1936, and caused the seal of said Board to be hereunto affixed.

EDWIN W. BURRITT, President.

Attest:

JOHN D. QUINN, Secretary.

(Seal)

WYOMING EXHIBIT 11-A.

CONTRACT.

100049

State of Wyoming, County of Goshen, ss.

This instrument was filed for record the 13 day of May, A. D. 1927, at 2 o'clock p. m., and is duly recorded in Book 87, on Page 532. James L. Knowlton, County Clerk, By R. A. Lawhead, Deputy.

United States to Goshen Irrigation District.

State of Wyoming, County of Goshen, ss.

I, James L. Knowlton, County Clerk and Ex-Officio Register of Deeds, do hereby certify that the within and foregoing is a true and correct copy of a certain "Contract" between The United States and The Goshen Irrigation District which was filed in my office under Number 100049 on the 13 day of May, 1927. So full and entire as the same appears in the Record Files of my office.

In Testimony Whereof, I have hereunto set my hand and affixed the Seal of My Office this 8th day of April, A. D. 1930.

JAMES L. KNOWLTON,
County Clerk and Ex-Officio
Register of Deeds.

Department of the Interior, Bureau of Reclamation,
North Platte Project.

Fort Laramie Division (Symbol 1 L R—81)

CONTRACT BETWEEN THE UNITED STATES AND THE GOSHEN IRRIGATION DISTRICT PROVIDING FOR THE TRANSFER OF THE OPERATION AND MAINTENANCE OF THE IRRIGATION WORKS OF THE FORT LARAMIE DIVISION IN WYOMING AND FOR THE REPLACEMENT OF CONSTRUCTION COST UPON A CROP PRODUCTION BASIS.

Wyoming Exhibit 11-A

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Department of Interior, Bureau of Reclamation,
North Platte Project, Fort Laramie Division.

CONTRACT BETWEEN THE UNITED STATES AND THE GOSHEN IRRIGATION DISTRICT PROVIDING FOR THE TRANSFER OF THE OPERATION AND MAINTENANCE OF THE IRRIGATION WORKS OF THE FORT LARAMIE DIVISION IN WYOMING AND FOR REPAYMENT OF CONSTRUCTION COST UPON A CROP PRODUCTION BASIS.

This Agreement, made this 24 day of Nov., 1926, between The United States of America, herein called the United States, acting for this purpose by E. C. Finney, 1st Asst. Secretary of the Interior, herein called the Secretary, under the provisions of the Act of Congress of June 16, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, and particularly under the provisions of Section 4 of the Act of Congress of December 5, 1924 (43 Stat. 672, 701), all referred to as the Reclamation Law, and the Goshen Irrigation District, an irrigation district organized under the laws of the State of Wyoming, and located in Goshen County, Wyoming, herein called the District:

Witnesseth That:

Explanatory Recitals.

2. Whereas, the District includes within its boundaries about 53,000 acres of irrigable lands which receive their water supply from or are susceptible of irrigation from the irrigation works constructed by the United States for the Fort Laramie Division of the North Platte project of the Bureau of Reclamation, and

—2—

3. Whereas, no public notice has heretofore been issued by the Secretary affecting the lands in the District or fixing and determining the cost of construction, and

4. Whereas, the landowners and entrymen of lands in the District desire to secure the benefits of Section 4 of said Act of December 5, 1924, and through the medium

of their Irrigation District to enter into a contract providing for and governing the manner of repayment of the cost of construction properly chargeable to their lands, and to take over the operation and maintenance of the canal system and irrigation works described in article numbered 33 of this contract (hereinafter referred to as the transferred works), which works are a part of the irrigation system of the Fort Laramie Unit of the North Platte project.

Now, Therefore, in consideration of the premises and the mutual covenants and agreements herein contained, it is agreed as follows:

United States to Store Water for District.

4½. The United States will store water for the irrigation of the District lands in the Pathfinder reservoir or elsewhere and the District shall have a perpetual right to the annual combined supply of said stored water together with the natural flow of the North Platte river, as the same may be augmented by precipitation, percolation, seepage, return flow, developed and undeveloped waters, in the quantity annually needed for the irrigation of the District lands, not, however, to exceed the quantity that can be beneficially used thereon, nor to exceed one cubic foot per second for each seventy acres of land; and in the event that the available water supply for the North Platte project in any year shall be reduced as the result of

natural conditions to a quantity less than is necessary for the adequate irrigation of all lands of said project, the District, which is hereby recognized as a part of the North Platte project, shall be entitled to its own proportionate part, as determined by the relation between the irrigated area of the District and the irrigable area of the entire North Platte project, and the District shall accept such proportionate part in full satisfaction of its claim for water during such period of shortage. The United States claims all waste, seepage, spring and percolating water

arising within the District and proposes to use such water upon lands in connection with the said project or watered from the works thereof, and the District hereby concedes such right and concurs in the said plan.

District Assumes Payment of Construction Charges.

5. The District assumes and agrees to pay to the United States in the manner hereinafter stated, construction charges as follows:

The equitable and ratable portion of cost of construction of all works heretofore or hereafter constructed for the benefit of the District as such cost is hereinafter defined, equitably and ratably chargeable to the irrigable area of lands embraced in the District in Classes 1 to 4 as the same have heretofore or may hereafter be classified pursuant to rules and regulations and suggestions which the Secretary has promulgated under authority of the Act of Congress. December 5, 1924 (43 Stat. 672), an amount which will not exceed the sum of $4,985,315.00. The cost incurred on the Fort Laramie Division as a whole, which includes the lands of the project in Nebraska-Wyoming lving under the canal heading at Whalen dam and extending easterly on the south side of the North

—4—

Platte river, shall be apportioned against the lands of this Division as follows: The amount to be charged against the lands within the Goshen Irrigation District shall bear the same ratio to the total cost and expenditures on the Fort Laramie Division as the irrigable area within the District shall bear to the total irrigable area within the Fort Laramie Division. Such charges shall include cost of engineering, clerical, legal, incidental and overhead expenditures of all sorts and kinds, and the costs of any and all rights of way, real property and damages to property, if any, and all cost or expense to the United States of whatsoever nature or kind incurred for the lands in the Fort Laramie Division. In case of dispute as to the amount of any item going to make up said cost of con-

struction, or of the portion thereof equitably and ratably chargeable to the District, the matter will be determined by the Secretary, whose decision will be final and binding upon both parties.

The payment of construction charges by the District to the United States shall continue until the said construction indebtedness hereby assumed and agreed to be paid has been fully met as herein provided.

Fixing Annual Construction Payment.

6. The construction charges assumed by the District under the provisions of Article 5 of this contract shall become due on the following terms and conditions: The District will pay to the United States each year a construction charge which will be determined by multiplying an average rate per acre (as announced by the Secretary) by the total number of irrigable acres in the District as determined and announced by the Secretary. It is under-

stood and agreed that the words "irrigable acres" as used in this article and in Article 5 of this contract embrace only the lands in Classes 1 to 4 as said lands have been heretofore or may hereafter be classified pursuant to the rules and regulations which the Secretary has or may promulgate under authority of the Act of Congress of December 5, 1924 (43 Stat. 672), and that it does not include lands which in the determination of the Secretary are temporarily or permanently unproductive. The average rate per acre to be used in determining the average construction payment to be made by the District to the United States under this Article shall be 5 per cent of the average gross annual acre income (as conclusively determined by the Secretary) in cultivation in the District for the ten calendar years first preceding the year in which such announcement is made by the Secretary. For the purpose of determining the annual construction payment to be made by the District, all the irrigable lands are considered to be in one class, but it is under-

stood and agreed that the District will adopt the classification of said lands adopted by the Secretary in establishing his classes 1 to 4, and will collect annual construction assessments at different rates per acre from the lands of various classes and the rate for each class shall be determined in the same manner as the rate for the entire District is determined; but the annual construction payment to be made by the District to the United States under this Article will not be changed by such classification.

The Secretary in announcing to the District the total number of the irrigable acres on which construction charges are to be computed under this article will omit any acreage upon which the construction charges as

herein fixed have been paid in full; will omit the unentered public lands in the District while in that status; will omit the acreage of State lands then in the District which may not then be by law or by contract subject to assessment by the District; will omit the acreage of temporarily unproductive lands as provided in Section 26 of the so-called Omnibus Bill, Act of May 25, 1926 (44 Stat. ——) and will also omit the acreage of lands acquired by the District on account of payment of delinquency as provided in Article 14 hereof and for the period named therein.

Payments Hereunder Are Full Payments for Water Rights

7. Whenever the District shall have made payment in full of the cost of construction as hereinabove fixed, the District shall then be held to have made full payment for its proportionate interest in the works heretofore or hereafter constructed for the benefit of the District lands and the water rights appurtenant thereto. The United States will make no contract with reference to any of such works which will impair or tend to impair the value, sufficiency, or permanency of the water rights of the lands in the District without the approval of the District first had and obtained. Notwithstanding the provisions of this para-

graph, it is agreed that the title to and the management and operation of the reservoirs and the works necessary for their protection and operation shall remain in the government until otherwise provided by Congress.

Water for Lingle Power Plant.

8. The District will carry for the United States in the transferred works (as hereinafter defined), such waters as the United States will furnish and require for the op-

eration of the Lingle Power Plant.

For the carriage and delivery of such power water, the United States will pay to the District annually a sum to be fixed by the Secretary representing a fair and adequate compensation for expenses incurred and property used by the District in so carrying said water to said power plant;

The earnings of the District under the provisions of this Article shall be applied first to the payment of any sums due the United States for operation and maintenance of the reserved works (as hereinafter described), and next to the current annual payments due the United States on account of the cost of construction herein assumed by the District: Provided, however, that the District will not be required by the United States to deliver water to the Lingle power plant at any time when such delivery of water will impair the sufficiencies of the water supply of which the District's lands are entitled.

Water for Nebraska Lands.

9. The District will carry for the United States in the transferred works (as hereinafter defined), such waters as the United States will furnish and require for the irrigation of the lands of the Fort Laramie Division of the North Platte project of the Bureau of Reclamation lying east of the Wyoming-Nebraska State line, as now constructed and will deliver the same to the United States at said State line in the main canal and laterals as now con-

structed: Provided, however, that the District shall not be required to deliver to the United States hereunder an

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amount of water in excess of the equitable and ratable proportion of water to which such lands in Nebraska are entitled from the whole amount then available for delivery to the entire Fort Laramie Division, nor at a rate in excess of the equitable and ratable share of such Nebraska lands in the then available carrying capacity of the Fort Laramie Canal. The decision of the Secretary as to the amount of water available, an equitable division thereof, and the division of available carrying capacity, shall be binding on all parties in interest.

The United States will pay annually to the District for the carriage and delivery of said water in said transferred works for the irrigation of lands lying east of the Wyoming-Nebraska State line an equitable amount to be fixed annually by the Secretary for such service. In order to enable the Secretary to arrive at such amount, the District will adopt a system of accounting which will show separately the cost of operating and maintaining the main canal, the lateral system, and the drainage system.

The earnings of the District under the provisions of this Article shall be applied first to the payment of any sums due the United States for operation and maintenance for the reserved works (as hereinafter described), and next on account of the cost of construction herein assumed by the District, and the balance, if any, shall be paid by the United States to the District.

In making deliveries of water at the Lingle power plant and at the Wyoming-Nebraska State line account shall be taken of the normal variations incident to the operation of

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the Transferred works.

District to Increase Assessments to Cover Deficiencies.

10. The total sums due each year from the District to

the United States are general obligations of the District and the District will each year levy assessments sufficient to pay the same in full to the United States, together with any deficiencies, and in the event that the sums realized are not sufficient to meet the total amount so due, the District in the next assessment levied thereafter will include an additional levy to meet such deficiencies.

Operation and Maintenance Charges to Be Uniform.

11. Said operation and maintenance charges will be uniform per irrigable acre as to all lands using similar amounts of water, and each irrigable acre of said project for which the required payments have been made shall be entitled to the delivery of the same share of the available water supply of the Irrigation District to which it would have been entitled under the various permits applicable thereto if the United States had continued to operate and maintain the transferred works.

Release of Liens Provided by the Reclamation Act or Reserved in Patents.

12. Whenever the execution of this contract shall have been approved by the District Court of the Sixth Judicial District of Wyoming in and for Goshen County, Wyoming, and the assessment for construction has been levied against the several tracts, lots and parcels of land in the District, to correspond with the provisions of this contract, and said assessment has been confirmed by the Court and the time has passed within which an appeal from said

assessment for construction may be taken, or if an appeal from said assessment for construction be taken, then as soon as said appeal has been affirmed in favor of the District, then all liens in favor of the United States, provided by the Reclamation Act above referred to, and all liens reserved in favor of the United States in any patents which may have heretofore issued for lands embraced in the District, shall (subject to the provisions of Section 2 of the Act of Congress of May 18, 1922, (42 Stat. 541) be re-

leased as to all lands against which such assessment for construction has been made and confirmed or affirmed, as the case may be, and the District's obligations herein provided for shall be accepted in lieu thereof. Such release shall be executed by the proper officers of the United States and will be delivered for record only when the provisions of this article have been complied with, and the provisions of Section 2 of said Act of Congress of May 15, 1922 have been fully met.

Future Announcements for Construction Payments.

13. After the close of the year 1927 and each year thereafter, and prior to April first following, the Secretary will notify the District in writing of his findings in regard to the average gross annual acre income for the irrigable lands in cultivation in the District for that year, and the average for the ten-year period including such year, and each of the nine preceding years within such period, according to the provisions of the Act of Congress of December 5, 1924 (43 Stat. 672, 701), unless the Secretary shall find the average gross acre income for such year to be so near the average last determined as to make no material difference in the rates previously determined, in

which event the rate last determined and stated by the Secretary shall continue. The failure of the Secretary to state his findings in regard to the average gross acre income for any future year, will be construed as equivalent to a finding by him that the average gross acre income for said year is the same as for the last preceding ten-year period, and that the rate last stated will continue.

Annual Construction Charges Payable December First

14. The first annual construction charge to be paid by the District to the United States under Article 6 hereof, will come due on December 1, 1929, and one instalment on December 1 of each year thereafter. For the first three years, that is for the years 1929, 1930, and 1931, the payment of construction charges will be as follows: One-

fourth of the first annual installment shall be paid December 1, 1929; one-half of the second annual installment shall be paid December 1, 1930; three-fourths of the third annual installment shall be paid December 1, 1931, and the balance of the sums due on the first three years' installments shall then be distributed over the remaining construction charges, the full amount of the annual payments of which shall thereafter, beginning December 1, 1932, be payable each year on December 1: Provided, however, that whenever the District shall collect from assessments for construction and have on hand in its treasury at any time as much as $5,000.00, the District will at once pay the same over to the United States until such pre-payments have wholly prepaid the installments of the cost of construction due the United States from the District on December 1, next following such prepayment. Payment of

construction charges on account of lands acquired by the District on account of payment delinquency shall be suspended until such lands are sold or leased by the District: Provided, however, that the period of suspension shall not exceed three years from the date the lands are so acquired or for such longer period than three years as the Secretary may deem advisable.

Penalty and Interest.

15. To any installment of the construction charge or any operation and maintenance charges or any part thereof which may remain unpaid by the District to the United States after the same shall have become due, there shall be added at once a penalty of one-half of one percentum (½%) thereof and thereafter a like payment of one-half of one percentum (½%) on the first day of each succeeding month as long as such default shall continue but it is understood that the penalties provided in this Article apply only to the payments to be made by the District to the United States and that assessments levied by the District will be subject to the penalties and interest charges provided in the State law as applicable thereto.

Wyoming Exhibit 11-A

Delinquent Charges and Cost of Transferred Equipment Added to Construction.

16. All charges due and unpaid to the United States at the date of the transfer of the works, including interest and penalties, together with the pro rata share of the book value of the equipment turned over to the District by Article 36 hereof, and the cost incurred by the United States in operating and maintaining the transferred works dur-

ing the year 1926 as covered by the provisions of the water rental contract between the District and the United States providing for a temporary supply of water for the lands of the District for the year 1926, shall be added to the total construction obligation of the District to the United States as fixed by Article 5 hereof, and the new total thus established shall then be the new construction cost chargeable to the District.

Carrying Out Obligations of Contracts.

17. The District shall perform and carry out in accordance with their true intent and meaning and to the satisfaction of the Secretary, all obligations imposed upon the United States in all contracts of whatever kind, affecting the Wyoming portion of said Fort Laramie Division now in force, and shall not attempt in any manner to change the terms of said contracts. Insofar as is permitted by law and if not otherwise herein provided, the District shall have all rights and privileges in and under all such contracts as the United States now has or would have if this contract were not in effect. No contract affecting the project made by the District except for the usual equipment, supplies and services in connection with the operation and maintenance of the transferred works and the delivery and distribution of water, shall be valid until approved by the Secretary, and a draft of such contract shall be submitted to the Secretary for approval as to the form before execution.

Secretary to Approve Bond of Treasurer.

18. The Secretary shall approve the amount of the bond required to be furnished by the Treasurer of the

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District and no person shall be authorized to act as Treasurer or to handle any of the funds to be collected or disbursed by the District without furnishing a surety company bond in an amount approved by the Secretary for the faithful performance of the duties of his office.

Amounts Due the United States a First Charge Upon Collections.

19. The amounts due the United States from the District for the operation and maintenance of the works reserved to the United States shall be a first charge upon the operation and maintenance collections of the District.

To Use All Powers to Collect Agreed Charges.

20. The District agrees that it will cause to be levied and collected all necessary assessments and will use all the powers and resources of the District, including the taxing power of the District and the power to withhold delivery of water, to collect and pay to the United States all charges provided for in this contract in full on or before the day that the same become due.

Agreed Charges a General Obligation of the District.

21. The District is obligated to pay to the United States the full amounts herein agreed upon according to the terms stated, regardless of individual default in the payment of any assessment or assessments levied by the District, Annual construction assessments shall be levied against each tract of irrigable land until the full construction charge apportioned to such tract has been paid notwithstanding that other tracts of land may be sooner

—15—

paid out and construction assessments (except for assessments to meet deficiencies as provided in Article 10) dis-

continued as to such other lands. The District shall increase its levy each year in order to obtain a sum sufficient to meet the deficiencies of past years, as provided in Article 10. Such increase may be levied upon all irrigable lands although the construction charges apportioned thereon have been fully paid, and the sums paid by the owners of such lands to make up the deficiency due to the failure of others to make payments shall not be considered as payment on the construction charges apportioned against such lands upon which such payments are made, but it is understood and agreed that when construction assessments on any tract of land in the District have been paid in an aggregate amount equal to the sum of $95.00 per acre, which amount shall be deemed to be the full amount of the construction charges applicable to such tract, including all the items mentioned herein, such tract of land shall hereinafter be referred to as "paid up land" and shall thereafter be liable for construction assessments, for the purpose of meeting the obligations of the District under this contract, only to the extent that assessments are levied to meet the total obligation of the District, which, however, is not to exceed the amount as fixed in Article 5, and may be assessed at a lesser rate than the rate applicable to the lands of similar class which are not paid up, if such a lesser rate will suffice to meet the District's obligations to the United States, together with the District's other obligations, and in the event of such delinquencies on the part of the District or the collection of construction assessments from such paid up lands, it shall

be the duty of the District to refund to the owners of such paid up lands the construction assessments collected therefrom in excess of the total construction charges applicable thereto, when, as and if the funds shall come into the treasury of the District from which such repayments can be made which are not required to pay the District's obligations to the United States or the District's share of the cost of the operation and maintenance of the transferred works and the maintenance of the District's organization.

Wyoming Exhibit 11-A

Adjustment of Cost Per Acre.

22. If the portion of the cost of construction of all works heretofore or hereafter constructed for the benefit of the District, which is herein assumed to be the sum of $4,985,315.00 shall prove to be less than that amount then the acre cost of $95.00 per acre fixed in Article 21 of this contract shall be proportionately reduced.

No Water to Be Delivered Without Payment

23. Pursuant to the provisions of Section C of the Act of Congress of August 13, 1914 (38 Stat. 686) no water shall be delivered to or for any tract of land in the District, the owner or holders of which shall be in arrears more than one year for the payment of any charges for operation and maintenance or any annual construction charge and penalties, or any assessment levied by the District for the purpose of paying such construction or operation and maintenance charges, or who after the beginning of the year 1927 shall fail to pay in advance the annual operation and maintenance charges: Provided, that no tract

of land in the District shall be deemed to be delinquent on which the District or any other party has paid to the United States all delinquent taxes.

Statement of Status of Payments Affecting Right to Water.

24. The District will furnish the United States a list of lands in the District which are entitled to receive water under the terms of the preceding article, which list shall be amended or supplemented from time to time after changes occur in regard to the status of said lands as to the qualifications to receive water, which list shall be available for the use of the United States in reducing the amount of water turned in at the head of the transferred works in proportion to the lands under said transferred works, which on account of delinquency in payment are not entitled to receive water. Water so withheld may be used by the District provided the District is not delin-

quent in the payment of any charges due the United States hereunder, upon other land in the District upon which the charges are paid.

Responsibility for Holding the United States Harmless.

25. After the transfer of said transferred works, the District shall hold the United States, its officers and agents, harmless as to any and all damage which may in any manner grow out of any operation and maintenance of the transferred works.

Rules and Regulations.

26. The Secretary reserves the right, so far as the purpose thereof may be consistent with the provisions of this contract, to make rules and regulations and tc add to and modify them as may be deemed proper and necessary to

carry out the true intent and meaning of the law and of this contract.

Public Land Subject to Assessment Under the Smith Act.

27. Pursuant to the provisions of Section 3 of the Act of Congress of May 15, 1922 (42 Stat. 541) all unentered public lands and entered lands for which no final certificate has been issued, located within the District and described in a list marked Exhibit "A" attached hereto and made a part hereof, are hereby designated as subject to the provisions of the Act of Congress of August 11, 1916 (39 Stat. 506): Provided, that unentered public lands while in that status shall not be assessed by the District for any purpose.

Contract to Be Authorized by Election and Confirmed by Court.

28. The execution of this contract by the District shall be authorized by the qualified electors of the District at any election held for that purpose. After the execution

of the contract, the District shall, without delay, prosecute to decree proceedings in court for the judicial confirmation of the authorization of the execution and the execution of this contract. The United States shall not in any way be bound to proceed under the terms of this contract until a confirmatory final decree in such proceedings shall have been rendered, including final decision on any appeal prosecuted therefrom. The District shall furnish the United States for its files, certified copies of all proceedings relating to the election upon this contract and the confirmation proceedings in connection therewith.

Claims and Complaints of Incorrect Distribution of Water.

29. The United States and its agents in charge of the

reserved works will use their best efforts and best judgment to deliver and turn out for the several parties entitled to receive water from said works their correct and proper share of the water actually available therefrom, and should the District, or any of the landowners or water users of the District, feel aggrieved on account of any alleged shortage in the water supply delivered by the United States hereunder, or on account of any alleged mistakes or inaccuracies in the division of the water among the parties entitled to receive water from said reserved works, such party shall at once report to the officer of the United States in charge of said reserved works such alleged shortage or error in the division or delivery of water, and such officer shall promptly investigate any such complaint and if he finds that the proper proportionate share of the available water supply to which such party is entitled is not being delivered for such party, he will correct the delivery insofar as the United States has control of such delivery and distribution, so that the correct proportionate share as nearly as practicable to which such party is entitled will be delivered to or for such party at the point of delivery herein provided. If any such party is dissatisfied with the decision of such officer of the

United States in charge of the reserved works, such party may apply to the Secretary for an order for the correction of any alleged error in the delivery or division of water from said reserved works, but neither the United States nor its officers or agents shall be liable in damages on account of any such alleged shortage or mistake in the delivery or division of the water from said reserved works.

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Distribution of Stored Water From North Platte River by State Officers.

30. The distribution of stored water from the Pathfinder reservoir constructed by the United States on the North Platte river, after the same is turned out of said reservoir into the river, will be in charge of the proper state officers or other officers charged by law with the distribution of stored water from North Platte river and with the regulations of headgates for such purpose.

Profits Under Subsections I and J of the Act of December 5, 1924.

31. Should any net profits be realized by the United States from the Lingle or Guernsey power plants, or from power developed at said plants, or from drops on any of the canals included among the transferred works herein described, or from any of the various sources named in subsections I and J of said Act of Congress of December 5, 1924, the same will be announced and determined each year by the Secretary in a written statement to be sent to the District. The portion of such net profit, if any, as determined by the secretary and set out in such annual statement as applicable to the District, shall be credited each year as follows:

(a) The annual installment of project construction charges of the District beginning with the installment first coming due and continuing with succeeding construction installments as far as such credit will go until the entire construction indebtedness of the District has been paid:

(b) Thereafter upon operation and maintenance charges as the same come due to the United States:

—21—

(c) As the District may direct; but no distribution to individual water users shall be made out of any such profits until all obligations to the United States have been fully paid. The Secretary shall determine the proportion of net profits, if any, under said subsections I and J from other sources equitably to be credited to the District, as well as the amount of such net profit. The decision of the Secretary shall be conclusive as to the amount of net profits derived under subsections I and J of said Act and the equitable proportion thereof to which the District is entitled.

Lands Brought in by Petition.

32. Lands hereafter brought into the District by petition shall be entitled to the same terms of payment and other benefits of this contract applicable to similar lands already in the District, and shall be likewise subject to the same obligations and conditions applicable to similar lands already in the District. Provided, however, that no change shall be made in the present boundaries of the District without the consent of the Secretary of the Interior.

Operation and Maintenance Transferred.

33. Effective December 31, 1926, there is hereby transferred to the District the care, operation and maintenance of the Wyoming portion of the Fort Laramie Division of the North Platte project, from which time the United States shall not be obligated to do any work in connection with the operation, maintenance or repair of the said Wyoming portion of said division. The works transferred are as follows:

—22—

(a) That portion of the main Fort Laramie Canal of the Fort Laramie Division extending from Station 12 to the Wyoming-Nebraska State line.

(b) All lateral distributaries, drainage channels, dams, dikes, protective works and structures constructed for the benefit of the lands of the District under said Fort Laramie Division of the project.

(c) All buildings in Wyoming used for operation purposes in connection with said Fort Laramie Division, except those reserved to the United States as hereafter described in Article 39. No title to any of the works passes.

District May Require Advance Payment as Toll Charge.

34. The District is authorized to require payment of operation and maintenance charges (including the charges due the United States for the operation and maintenance of the reserved works) in advance as a toll charge and to withhold delivery of water until payment thereof is made.

District Accepts, Care, Operation and Maintenance.

33. The District hereby accepts the care, operation and maintenance of the transferred works, and at its own cost, and without cost to the United States, will care for, operate and maintain the same in full compliance with the said Reclamation Law as it now exists or may hereafter be amended, the regulations of the Secretary now and hereafter made thereunder, and the terms of this contract, and any other contracts in force affecting the transferred works, in such manner that said works shall remain in as good and efficient condition for diversion and distribution of irrigation waters as is now the case. The District

shall use all proper methods to secure the economical and beneficial use of irrigation water.

Rights of Way for Drains, etc.

35½. All ditches, whether constructed by the United States or by the District, and whether for laterals or drains, hereafter constructed within the exterior boundaries of the District, and all outlet channels or other canals from the territory of the District through other lands which lay between the District and the river, shall be

ditches or canals constructed by the authority of the United States within the purview of the Act of August 30, 1890 (26 Stat. 391); and the District may exercise any and all rights which the United States might exercise for the necessary construction and operation and maintenance of such ditches or canals.

Turning Over Certain Equipment and Supplies.

36. At some suitable time prior to the first day of November, 1926, the United States will cause to be submitted to a meeting of the Board of Commissioners of the District a list of the equipment and supplies used in connection with the operation and maintenance of the transferred works which will no longer be needed by the United States after the transfer of said works, together with the book value thereof, the said book value being the cost thereof less estimated depreciation. Items on said list which the members of the said Board there present, or a majority thereof, shall indicate that the Board does not desire to take over will be stricken from the list, and effective December 31, 1926, the items remaining on the list will be turned over to the District for use in the opera-

tion of the transferred works.

The said book value of the equipment and supplies turned over to the District, as in this Article provided, shall be included in the cost of construction fixed in Article 5 hereof.

Keeping Transferred Works in Repair.

37. No substantial change in any of the transferred works shall be made by the District without first obtaining the written consent of the Secretary until payment of all construction charges allocated to the Wyoming portion of said Fort Laramie Division shall be completed. The District shall make promptly any and all repairs to the transferred works which in the opinion of the Secretary are deemed necessary for the proper care, operation and maintenance of the transferred works. If at any time in

the opinion of the Secretary any part of the transferred works shall from any cause be in a condition unfit for service, the Secretary may order the water turned out and shut off until in his opinion such works are put into proper condition for service. In case of neglect or failure of the District to make such repairs, the United States may, at the option of the Secretary, take back the care, operation and maintenance of the transferred works, or may cause the repairs to be made and charge the cost thereof to the District, which charge the District agrees to pay upon rendition of a statement therefor, within thirty days from the rendition of said statement. The District shall make, announce and collect sufficient operation and maintenance or toll charges to pay this charge to the United States in addition to providing the necessary funds to meet the

other obligations of the District.

Operation and Maintenance Payable in Advance.

38. The estimated operation and maintenance charge applicable to each tract of land receiving water through the transferred works will be collected in advance, and water will not be delivered until such charge has been paid. In order to conform as closely as possible both to the provisions of Section 5 of the Act of Congress of August 13, 1914 (38 Stat. 686) requiring operation and maintenance charges to be based on the number of acre feet of water delivered, with a minimum operation and maintenance charge whether water is used or not, and Subsection N of Section 4 of said Act of Congress of December 5, 1924, requiring payment of the operation and maintenance charges in advance, it is agreed that the operation and maintenance charges to be collected in advance by the District beginning with the year 1927, may be based upon an estimate of the number of acre-feet of water to be used by each tract of land during the current year, it being assumed for the purpose of such estimate that the number of acre-feet to be delivered to each tract of land during the current year will be the average number of acre-feet de-

livered to all tracts during the preceding year, and a charge will be made for each acre-foot of water to be delivered under said estimate and assumption, but with a minimum operation and maintenance charge per irrigable acre, whether the land is irrigated or not, entitling the landowner to the delivery of not less than one acre-foot of water per irrigable acre at the rate per acre-foot computed on the foregoing assumption.

Operation and Maintenance of Certain Works Retained by The United States—Payment by District of a Pro Rata Share of Cost of Operation and Maintenance of Retained Works.

39. The Pathfinder dam and reservoir; Guernsey dam and reservoir; Whalen dam, including the desilting basin and the wasteway therefrom to the river, and any dams and reservoirs to be constructed, together with works and buildings incidental to said dams and reservoirs necessary for the protection and control thereof, including buildings, telephone lines from Pathfinder dam to Casper, Wyoming, and from Guernsey dam to Guernsey, Wyoming, and the Fort Laramie canal from its head to Station 12 and the Interstate Canal from its head to Station 2; the headquarters buildings and shops with storage and material yard at Mitchell, the Guernsey power plant and the Lingle power plant, with buildings and works appurtenant and incidental to both power plants, including the feeder canal from Laramie river to the Fort Laramie canal, all lines for the transmission of electrical energy, transformer stations and incidental equipment of any kind or nature now owned or hereafter acquired, and the telephone line now owned or hereafter acquired by the United States located in and used upon or in connection with said Fort Laramie Division, will be operated and maintained by the United States. The United States will also continue the measurement and distribution of water from the North Platte river to the District and other territory on the North Platte river. No part of the reserved works shall be sold

or lease by the United States until the contract of sale or lease shall have been submitted to the District for its

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consideration and advice. For the lands in the District lying under the transferred works, the water to which such lands are entitled (and water for the power plant at Lingle and for the use of the United States in Nebraska) will be delivered by the United States to the District at the said point on said Fort Laramie canal at approximately station 12, and will there be received by the District and distributed to the parties entitled thereto (except waters carried for the United States, which waters will be delivered to it at the Lingle power plant headgate and the Wyoming-Nebraska State line, as hereinabove provided), and the cost of operation and maintenance of said reserved works, including the net cost of the operation and maintenance of the Guernsey dam power plant, the Lingle power plant, the buildings and works appurtenant to both plants, and all lines for transmission of electrical energy, together with transformer stations and incidental equipment of every kind or nature now owned or hereafter acquired, will be estimated, stated, and determined each year, beginning with the year 1927, by the Secretary, and divided among the several parties receiving water therefrom in proportion to their respective interests, and a statement thereof furnished to the District showing the part of said cost of operation and maintenance of said reserved works, and the cost of the protection and distribution of water therefrom properly chargeable to the lands receiving water through said transferred works, and the Secretary shall also announce and determine and show on said statement the cost of the operation and maintenance of said reserved works. Said accounts chargeable to the District for its proportionate share of the operation and maintenance of reserved works shall be paid in the following manner:

—28—

On or before April 1, 1927, and on or before April 1, of each year thereafter, the Secretary shall furnish the Dis-

trict an estimate of the cost to be incurred during that calendar year for the above named operation and maintenance, and an estimate of the District's proportionate share thereof on the basis above stated, and on or before June 1, following the delivery of said estimate, said District shall pay to the United States its proportionate part of said estimated cost as shown in said estimate, and on or before April 1 of each year, beginning with the year 1928, the Secretary will furnish the Board with the statement above provided for of the actual cost of said operation and maintenance during the preceding year, including all the items of expense to be incurred by the United States as provided herein, and within thirty days after the delivery of said statement the District shall pay to the United States or the United States shall refund or credit to the District a sufficient amount of money so that the total amount paid by the District to the United States as finally adjusted for each year's operation and maintenance of said reserved works shall be the District's pro rata share of said actual cost and expense as above provided for and shown by the said statement of actual cost.

Water Developed in Drains

40. The irrigable land of the District may have the use and benefit of the water supply developed in the drainage system in said Division insofar as the same equitably belongs to the United States, and the diversion thereof does

not conflict with any existing contract right or rights acquired through the division and use of such water through works constructed by the United States for the purpose of conveying and utilizing such water on other divisions of said project or under Warren Act contract, the said right to divert and utilize any portion of said drainage water to be conditioned upon the District furnishing the means of diverting or pumping such water from the drains into the canal system and paying the cost of the operation and maintenance of the necessary pumps or other means of diversion.

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Competent Superintendence Required.

41. Until payment to the United States of all charges allocated to the Wyoming portion of said Fort Laramie Division, except the operation and maintenance of the reserved works, the District shall employ as manager a competent irrigation manager who shall have had experience as manager in the operation of similar irrigation works. The selection of such person shall be subject to the approval of the Secretary; and upon notice from the Secretary that such manager is or has become unsatisfactory, the District shall promptly and as often as much notice is given, terminate the employment of such unsatisfactory employe and employ one acceptable to the Secretary.

District to Receive Benefits of Future Legislation.

42. Should Congress hereafter enact legislation permitting the District to meet its obligation to the United States under more favorable terms, or reducing the indebtedness due from the District to the United States, or providing

any other terms or benefits acceptable to the District, nothing contained in this contract shall prevent the District from receiving the benefits of such legislation. The District shall also receive the adjustment provided in the so-called Omnibus Bill, Act of May 25, 1926.

District to Keep Books and Records and Report Crop Returns.

43. In order that the United States may withdraw as completely as possible from the management of the transferred works, the District shall:

(a) Install and maintain a modern set of books to be acceptable to the Secretary, showing all financial transactions of the District and furnish such financial reports and statements as may be required from time to time by the Secretary;

(b) Keep an accurate record of all crops raised and agricultural or livestock products produced on the Wyo-

ming portion of said Fort Laramie Division and furnish to the Secretary on or before December 31 of each year, a crop report in form prescribed by the Secretary;

(c) Keep each year a careful and accurate record of the water supply of the Wyoming portion of said Fort Laramie Division and the distribution of the same and furnish such detailed reports concerning the same as may be required by the Secretary;

(d) Keep and report such other records as the Secretary may require and in the manner and form he may require.

Crop Census.

44. The Secretary shall have authority from time to time when he shall determine it necessary or desirable to do so, but not oftener than once a year, to cause a crop census to be taken and an investigation to be made of the acre income of the lands of the District, or so much thereof as he deems necessary or desirable for the purpose of checking the records furnished by the District or securing

independent information concerning the crops and income produced on the lands of the District. The Secretary may require such information to be given under oath and the District will refuse water to any owner or occupant of land who shall refuse to give under oath such information concerning crop production and income when requested to do so by the crop census-taker appointed by the Secretary. A statement of the cost of such crop census and investigation shall be furnished to the District and the cost thereof as shown by said statement will be paid by the District to the United States in the same manner and at the same time as the cost of the operation and maintenance of the retained works.

Inspection by the United States.

45. The Secretary shall cause a reasonable inspection of the transferred works to be made once a year and oftener in his discretion, to ascertain whether the terms

of this contract are being satisfactorily executed by the District. Such inspection shall include examination of the transferred works and of all books, records and papers of the District, together with examinations in the office of the Bureau of Reclamation of all contracts, papers, plans, records and programs connected with the said property. The actual expenses of such inspection as found by the secretary shall be paid by the District to the United States in the same manner and at the same time as the cost of the operation and maintenance of the retained works.

Contract May be Terminated in Case of Breach on One Year's Notice.

46. In case of the breach of any of the terms and conditions of this contract by the District, the United States reserves the right, upon one year's written notice to the

District, to terminate this contract, and upon the termination thereof the transferred property shall be returned to the United States in as good condition as when received, reasonable wear and damage by the elements excepted; Provided, however, that such return of the transferred property shall not affect the amount and terms of construction charges as herein provided.

Replacement of Delinquent Treasurer.

47. Should the Treasurer of the District at any time when the District has collected and has available in the hands of the Treasurer, sufficient funds to make such payments, fail to pay promptly to the United States the construction or operation and maintenance charges herein agreed to be paid by the District, the District will, upon notice from the Secretary, and as often as such notice is given discharge such Treasurer and terminate his authority to act as Treasurer of the District and select another Treasurer satisfactory to the Secretary to perform such duties.

Access to Books and Records.

48. The proper officers or agents of the District shall have full and free access at all reasonable times to the project books and office records of the United States relating to the construction, acquisition, care operation and maintenance of the Wyoming portion of said Fort Laramie Division and of the reserved works and the status of the District accounts and payments of operation and maintenance and all construction charges, with the right at any time during office hours to make copies of or from the same, or any of them, and the proper representative of the United States shall have similar rights in respect to

the books and records of the District.

Failure to Secure Confirmation of Contract by Court Authorizes United States to Terminate this Contract.

49. Although the United States is not in any way bound to proceed under this contract until its confirmatory final judgment from the court of competent jurisdiction shall have been rendered, as provided in Article 28 hereof; it is understood that if the United States desires to do so, it may proceed under this contract after the execution thereof by the District Board and the holding of the District election authorizing the same, but should the United States so proceed before confirmation, it is agreed and understood that should the District fail to secure such confirmation within a year from the date of such contract, the United States may terminate this contract and discontinue operations thereunder, and in that event the District and the District landowners shall have no further rights under this contract and shall revert to the terms of payment which would have applied to said landowners had this contract never been made.

Water Turned Out of Pathfinder and Guernsey as Ordered.

50. The water to be delivered to the District under the provisions of this contract from the Pathfinder and

Guernsey reservoirs, shall be turned out as ordered by the District at a rate not in excess of the District's pro rata share of the outlet capacity of the reservoir; Provided, the United States be notified by the District of the times and rates of delivery desired in abundant time to enable it to transmit the proper instrucions to its agents in charge of dam and storage reservoir, and in any event

at least six (6) days prior to the time that delivery is to be made, and Provided further, that the total amount which the District shall have the right to order from said reservoir during any irrigation season shall not exceed the proportionate share of water actually available from said reservoir to which the lands of the Goshen Irrigation District receiving water from the transferred works are entitled.

While there is an adequate supply of water in the Pathfinder and Guernsey reservoirs, the amount of water delivered to the District shall be limited only by the District's pro rata share of the then available carrying capacity of the Fort Laramie canal, provided however, that when in times of scarcity it becomes necessary to deliver less than the capacity of the canal, the water available shall be divided ratably among the various divisions of the project in proportion to the acreage of each division. The requirements of this Article as to the rates of delivery of water are not to be effective (1) if a different rate of delivery is prescribed by the proper officials of the State of Wyoming, or by order or decree of a competent court, or (2) if unlawful diversions by third parties prevent the delivery herein required.

Congressional Appropriation Clause.

51. This contract is subject to appropriation by Congress from year to year of funds sufficient to carry on the works, and no liability shall accrue against the United States in case such funds are not appropriated by Congress.

Interest in Contract not Transferable.

52. No interest in this agreement is transferable by the District to any other party and any such attempted transfer shall cause this contract to become subject to annulment at the option of the United States. All rights of action for breach of this contract are reserved to the United States as provided in Section 3737 of the Revised Statutes of the United States.

Member of Congress Clause.

53. No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this contract, or to any benefits to arise therefrom. Nothing, however, herein contained shall be construed to extend to any incorporated company if the contract be for the general benefit of such corporation or company.

In Testimony Whereof, the parties hereto have hereunto affixed their names the day and year first above written.

THE UNITED STATES OF AMERICA
By E. C. FINNEY, *1st Ass't. Sec. of Int.*

Dept. of Interior Seal.

Goshen Irrigation Dist. Corporate Seal, Goshen County, Wyo.

GOSHEN IRRIGATION DISTRICT
By: R. F. TEBBET, *Pres. & Comm.*
P. T. LEHMER, *Commissioner*
FRED KATZER, *Commissioner*
C. R. PACKER, *Commissioner*
GEO. S. HAAS, *Commissioner*
Its Board of Commissioners

Attest:
NELLE ARMITAGE, *Secretary*
Witness—ERLE H. REID

State of Wyoming, County of Goshen—ss.

On this 21st day of September, 1926, before me appeared R. F. Tebbet to me personally known, who being by me

duly sworn, did say that he is the President of Goshen Irrigation District and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by its authority of its board of Commissioners and the said R. F. Tebbet acknowledged said instrument to be the free act and deed of said corporation.

My Commission Expires—Dec. 28, 1929.

In Witness Whereof, I have hereunto set my hand and affixed my Notarial Seal. (Signed) Nelle Armitage, Notary Public. (Seal.)

Public Lands.

In the Goshen Irrigation District Unentered and Those Entered for which Final Certificate has not issued. See Article No. 36.

T. 21 N., R. 60 W., 6th P.M.

Sec. 3 Lots 3, 4, 6 and 7, W½ SE¼
Sec. 4 Lots 1, 2, 3 and 4, SE¼ NE¼
Sec. 5 Lots 1, 2, 3 and 4, S½ N½ and SW¼
Sec. 6 Lots 4 and 5 and SE¼
Sec. 10 Lots 1 and W½ NE¼

T. 22 N., R. 60 W., 6th P. M.

Sec. 5 Lots 1, 2, 3 and 4, S½ NW¼ and S½
Sec. 6 Lot 3, SE¼ NW¼, NE¼ SW¼ and NW¼ SE¼
Sec. 7 N½ NE¼, E½ NW¼ and Lot 2
Sec. 8 NW¼ NW¼ and SW¼ SE¼
Sec. 9 NE¼ and S½
Sec. 10 All
Sec. 15 All
Sec. 17 NE¼, N½ NW¼, SE¼ NW¼ and SW¼
Sec. 19 NE¼, E½ NW¼, Lot 4, SE¼ SW¼ and SW¼ SE¼
Sec. 20 NW¼
Sec. 22 Lots 1, 3 and 4, NW¼ NE¼, W½ and W½ SE¼
Sec. 27 All
Sec. 28 S½

Sec. 29 W½ SW¼, SE¼ SW¼, NE¼ SE¼ and S½ SE¼
Sec. 30 NE¼, E½ NW¼, Lots 1 and 2, and SE¼
Sec. 31 Lots 2, 3 and 4, E½ NE¼, E½ SW¼ and SE¼
Sec. 32 NW¼, NE¼ NW¼, W½ NW¼, NW¼ SW¼ and SE¼
Sec. 33 All.
Sec. 34 All.

T. 23 N., R. 60 W., 6th P. M.

Sec. 6 E½ SW¼
Sec. 7 NE¼, E½ NW¼, Lot 4, SE¼ SW¼ and W½ SE¼
Sec. 15 SW½ NE¼, NW¼, NW¼ SE¼ and Lot 3 South of French ditch
Sec. 17 NE¼ NW¼, NE¼ SW¼, S½ SW¼ and N½ SE¼
Sec. 18 Lot 1, NE¼ NW¼, E½ SW¼ and W½ SE¼
Sec. 19 W½NE¼ E½NW¼, Lots 1, 2, 3 and 4 E½ SW¼ and S½SE¼
Sec. 20 W½NE¼, SE¼NW¼, W½ and SE¼
Sec. 21 NE¼SW¼, S½SW¼ and W½ SE¼
Sec. 28 W½NE¼, Lots 2, 3 & 4, E½NW¼ and W½SE¼
Sec. 27 Lots 1 and 2, W½NE¼ S½NW¼ and SW¼
Sec. 28 W½NE¼, SE¼NW¼ and S½SE¼
Sec. 30 Lots 1, 2, 3 and 4 and E½W½
Sec. 31 All
Sec. 32 All
Sec. 33 NW¼ and N½S½
Sec. 34 SW¼NE¼, W½NW¼, SE¼NW¼, N½SW¼ and NW¼SE¼

T. 22 N., R. 51 W., 6th P. M.

Sec. 9 S½
Sec. 14 SW¼
Sec. 15 NE¼SW¼, S½SW¼ and SE¼
Sec. 23 W½NE¼, SE¼NE¼, N½NW¼, SE¼NW¼, NE¼SW¼, S½SW¼ and SE¼
Sec. 24 SE¼SE¼
Sec. 25 SW¼
Sec. 26 N½ and SE¼

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Sec. 35 NE¼, N½NW¼, SE¼NW¼, E½SW¼ and SE¼

T. 23 N., R. 61 W., 6th P. M.

Sec. 1 S½
Sec. 2 E½SW¼ and W½SE¼
Sec. 9 S½SW¼
Sec. 10 SW¼NE¼ and W½SE¼
Sec. 11 W½NE¼, SE¼NE¼, E½W½ and SE¼
Sec. 12 N½, SE¼SW¼ and SE¼
Sec. 13 NE¼, E½NW¼ and S½S½
Sec. 14 NE¼NW¼, S½NW¼ and SW¼
Sec. 15 NW¼NE¼, S½NE¼, W½ and SE¼
Sec 17 All
Sec. 18 SE¼
Sec. 19 All
Sec. 20 All
Sec. 21 W½ and SE¼
Sec. 22 NE¼, E½NW¼ and S½
Sec. 23 NW¼, W½SW¼ and SE¼
Sec. 24 N½N½, W½SW¼ and S½SE¼
Sec. 25 N½, N½NE¼SW¼, N½N½SW¼NE¼SW¼, N½NW¼SW¼, W½SW¼NW¼SW¼, W½E½SW¼NW¼S¼W, W½E½SW¼ NW¼SW¼, N½NE¼SE¼NW¼SW¼ and SE¼
Sec. 26 All
Sec. 27 N½ and SE¼
Sec. 28 All
Sec. 29 E½NE¼, W½NW¼ and SE¼
Sec. 30 Lots 1 and 2, E½NW¼, NE¼, NE¼SW¼, N½ SE¼ and SE¼SE¼
Sec. 31 NE¼NE¼, S½NE¼, Lot 4, E½SW¼ and SW¼SE¼
Sec. 33 N½N½, SW¼NW¼
Sec. 34 NE¼
Sec. 35 N½

T. 24 N., R. 61 W., 6th P. M.

Sec. 18 Lot 4
Sec. 19 NE¼NW¼, Lots 1, 2 and 3, NE¼SW¼ and N½SE¼
Sec. 20 SW¼

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Sec. 25 SW¼
Sec. 26 NE¼, NE¼NW¼, S½NW¼ and S½
Sec. 27 SE¼NE¼, SW¼NW¼ and NW¼SW¼
Sec. 28 SW¼ and N½SE¼
Sec. 29 S½NE¼, E½W½ and N½SE¼
Sec. 30 NE¼, E½NW¼, Lots 3, 4 and 6, E½SW¼ and SE¼
Sec. 31 Lots 1 and 2 and E½NW¼
Sec. 34 NE¼, SE¼NW¼, N½SE¼ and SE¼SE¼
Sec. 35 E½E½ and E½W½

T. 22 N., R. 62 W., 6th P. M.

Sec. 1 SE¼

T. 23 N., R. 62 W., 6th P. M.

Sec. 1 Lots 3 and 4 and S½NW¼
Sec. 2 Lot 1
Sec. 3 Lots 1, 2, 3 and 4, S½NW¼, S½NE¼ and SW¼
Sec. 4 Lots 1, 2 and 4, S½NE¼, SW¼NW¼, W½SW¼ and SW¼SE¼
Sec. 5 Lot 3, SE¼NW¼ and E½SE¼
Sec. 6 SE¼NW¼, Lots 6 and 7 and E½SW¼
Sec. 7 W½E½ and E½W½
Sec. 9 NE¼NE¼, N½SW¼, SE¼SW¼ and NW¼SE¼
Sec. 19 Lot 4
Sec. 26 SE¼
Sec. 30 Lots 1 and 2 and E½NW¼.

T. 24 N., R. 62 W., 6th P. M.

Sec. 4 E½SW¼
Sec. 5 Lot 4, SW¼NW¼ and W½WE¼
Sec. 6 S½NE¼, Lot 5, SE¼NW¼, E½SW¼ and N½SE¼
Sec. 8 NW¼NE¼ and NE¼NW¼
Sec. 9 NW¼
Sec. 10 S½
Sec. 11 SW¼
Sec. 13 S½NE¼
Sec. 14 SE¼NE¼, NE¼SW¼ and N½SE¼
Sec. 15 N½NE¼
Sec. 23 SW¼ and W½SE¼

Wyoming Exhibit 11-A

Sec. 24 E½
Sec. 25 NE¼, SW¼NW¼ and S½
Sec. 26 NE¼, N½NW¼, SE¼NW¼, NE¼SW¼, S½ SW¼ and SE¼
Sec. 27 SW¼ and S½SE¼
Sec. 31 NE¼ and E½W½
Sec. 32 SW¼NW¼ and SE¼
Sec. 33 NE¼, W½NW¼ and S½
Sec. 34 N½, E½SW¼ and SE¼
Sec. 35 NE¼, SW¼ and W½SE¼

T. 25 N., R. 62 W., 6th P. M.

Sec. 31 SE¼

T. 23 N., R. 63 W., 6th P. M.

Sec. 1 Lots 1, 2 and 4, S½NE¼, SW¼NW¼, SW¼ and W½SE¼
Sec. 2 Lot 2, SW¼NE¼ and W½SE¼
Sec. 3 Lots 1, 2 and 3 and 4, S½N½, N½SW¼ and W½SE¼
Sec. 4 Lot 4, SW¼NW¼ and W½SW¼
Sec. 5 S½SE¼NW¼, SW¼ and W½SE¼
Sec. 6 N½SE¼ and SE¼SE¼
Sec. 7 NE¼, N½SE¼ and N½S½SE¼
Sec. 8 NE¼, N½NW¼, N½SW¼NW¼, SE¼NW¼, E½SW¼ and SW¼SE¼
Sec. 9 N½NE¼, SW¼NW¼, SW¼ and SW¼SE¼
Sec. 10 N½NW¼
Sec. 12 NW¼
Sec. 13 S½SW¼
Sec. 14 W½ and S½SE¼
Sec. 15 N½NW¼
Sec. 17 N½NE¼NW¼
Sec. 21 NE¼, N½NW¼, SE¼NW¼, NE¼SW¼ and SE¼
Sec. 22 SW¼
Sec. 23 N½NW¼
Sec. 24 N½SE¼ and SE¼SE¼
Sec. 25 NW¼NE¼, E½NW¼ and NE¼SW¼

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T. 24 N., R. 63 W., 6th P. M.

Sec. 34 SE¼NE¼, NE¼SE¼ and S½SE¼
Sec. 35 W½E½, SW¼NW¼, W½SW¼ and SE¼SW¼

T. 25 N., R. 63 W., 6th P. M.

Sec. 6 Lots 3 and 4
Sec. 17 SW¼SW¼
Sec. 18 SE¼SE¼
Sec. 21 E½NE¼
Sec. 22 NW¼NE¼, N½NW¼ and SE¼NW¼
Sec. 26 NW¼

T. 26 N., R. 63 W., 6th P. M.

Sec. 31 E½SW¼

T. 26 N., R. 64 W., 6th P. M.

Sec. 27 Lots 3, 6, 7 and 8 and SE¼SW¼
Sec. 26 NW¼SW¼

WYOMING EXHIBIT 31.

Permit No. 18488.

Notice of Completion Received..... Proof Submitted.....

Corrected Application for a Permit to Divert and Appropriate the Water of the State of Wyoming.
Water Division No. 1. District No.....

I, Harry W. Bashore of Casper, County of Natrona, State of Wyoming, being duly sworn according to law, upon my oath say:

1. The name of the applicant the Secretary of the Interior, United States of America.

2. The postoffice address of the applicant, Washington, D. C.

3. The use to which the water is to be applied is Irrigation, Domestic, Manufacturing, Power and other beneficial purposes.

4. The name of the ditch or canal is Casper Canal.

5. The source of the proposed appropriation is The North Platte River which is a tributary of The North Platte River.

6. The headgate of the proposed ditch or canal is located S 19° 11′ W 4230 feet distant from the NE corner of Section 23, T. 30 N., R. 83 W., and is in the SW¼ SE¼ of Section 23, T. 30 N., R. 83 W.

7. The said ditch or canal is to be 106.00 miles long.

8. The carrying capacity of the ditch or canal at the headgate is 1200 cu. ft. per sec.

9. (a) The nature of the material to be moved is Limestone, Sandstone, Shale, Clay, Sandy Loam.

(b) Number, length and size of tunnels #1—Dia. 14′—2900′ long; #2—Dia. 14′ long; #3—Dia. 14′—1200′ long; #4—14′ Dia.—2000′ long; #5—14′ Dia.—1900′ long; #6—13′ Dia.—5400′ long.

(c) Number, length and size of Siphons;—#1—14′ Dia. —300′ long; #2—14′ Dia.—200′ long; #3—14′ Dia.—300′ long; #4—14′ Dia.—250′ long; #5—13′ Dia.—225′ long; #6—13′ Dia.—250′ long; #7—13′ Dia.—1100′ long; #8—13′ Dia.—250′ long; #9—13′ Dia —400′ long; #10—13′ Dia. 250′ long; #11 9′ Dia. — 400′ long; #12 — 9′ Dia. — 3800′ long; #12 — 9′ Dia. — 400′ long and 6 lateral siphons Dia. from 2′ to 6′—Total aggregate length 26,700 feet.

10. The estimated cost of said works is 22,700,000 Dollars.

11. Construction on proposed work will begin within one year from date of approval of this application.

12. The time required for the completion of the ditches and other distributing works is Five years from Date of Approval.

13. The time required to complete the application of water to the beneficial uses stated in this application is ten years from Date of Approval.

14. The accompanying map is prepared in accordance with the Manual of Regulations and Instructions for Filing Applications in the State Engineer's Office and is hereby declared a part of this application.

15. A summary of the land to be irrigated is described in the following tabulation:

(Give Irrigable Acreage in Each 40-acre Subdivision. Designate Ownership of Land, Government, State or Private. If Private, Give Name of Owners)

Township	Range	Sec.	NE¼ NE¼	NE¼ NW¼	NE¼ SW¼	NE¼ SE¼	NW¼ NE¼	NW¼ NW¼	NW¼ SW¼	NW¼ SE¼	SW¼ NE¼	SW¼ NW¼	SW¼ SW¼	SW¼ SE¼	SE¼ NE¼	SE¼ NW¼	SE¼ SW¼	SE¼ SE¼	Totals
30	83																		124
30	82																		2516
30	81																		394
31	81																		4999
31	82																		4090
32	81																		2879
32	82																		799
33	79																		33
33	80																		4035
33	81																		3625
33	82																		440
34	78																		1995
34	79																		11267
34	80																		14411
34	81																		6134
34	82																		473
35	78																		942
35	79																		4565
35	80																		6260
35	81																		7928
35	82																		1238
36	80																		115
36	81																		6947
36	82																		700
Less areas under Permits, duplicated in above, which may or may not desire supplemental water supply.																		Sub—Total	86969
30	82																		214.5
31	81																		1616
31	82																		654
32	81																		54
32	82																		148
33	80																		246
33	82																		77
34	80																		757
34	82																		45
35	82																		527
36	81																		367
																		Sub—Total	4705.5
																		Total Number of Acres to Be Irrigated	82,263.5

The irrigable area in each 40-acre subdivision is stated in the sheets numbered 1 to 58 accompanying the corrected application.

(Signed) HARRY BASHORE.

Wyoming Exhibit 31

The State of Wyoming, County of Natrona, ss.

I hereby certify that the foregoing Corrected application was signed in my presence and sworn to before me by Harry W. Bashore this 26th day of July, 1934.

SIDNEY J. KENT,
(Seal) Notary Public.

My Commission expires August 8, 1937.

The State of Wyoming, State Engineer's Office, ss.

This is to Certify that I have examined the foregoing Corrected application and do hereby grant the same subject to the following limitations and conditions:

This permit is issued subject to all rights which have vested and accrued under the laws of Wyoming, as of this date, to the use of the waters of the North Platte River and its tributaries above the Pathfinder Dam; this permit shall be limited to the irrigation of not to exceed 66,000 acres of land, said acreage to be selected from the lands described in the corrected application.

Construction of proposed work shall begin within one year from the date of approval.

The time for completing the work shall terminate on December 31, 1938.

The time for completing the application of water to beneficial use shall terminate on December 31, 1939, and final proof of appropriation shall be made within five years thereafter.

The amount of appropriation shall be limited to one cubic foot per second of time for each seventy acres of land reclaimed on or before December 31, 1939, and the additional volume used for domestic, manufacturing, power and other beneficial purposes as called for in this permit, on or before said date.

Witness my hand this 14th day of September, A. D. 1934.

EDWIN W. BURRITT,
State Engineer.

Wyoming Exhibit 31

The State of Wyoming, State Engineer's Office, ss.

This instrument was received and filed for record on the ..... day of ....., A. D. 19....., at ..... o'clock ..... M.

Recorded in Book 59 of Applications, on Page .....

.....

State Engineer.

The following notations have been added to the original record by the office of the State Engineer:

Notice of Completion Received .....

Proof Submitted .....

This amended application received July 27, 1934, at 9:00 A. M.

EDWIN W. BURRITT,
State Engineer.

Permit No. 18488.

Corrected Application for a Permit to Divert and Appropriate the Water of the State of Wyoming.

Water Division No. 1. District No.....

I, Harry W. Bashore of Casper, County of Natrona, State of Wyoming, being duly sworn according to law, upon my oath say:

1. The name of the applicant the Secretary of the Interior, United States of America.

2. The postoffice address of the applicant, Washington, D. C.

3. The use to which the water is to be applied is Irrigation, Domestic, Manufacturing, Power and other beneficial purposes.

4. The name of the ditch or canal is Casper Canal.

5. The source of the proposed appropriation is The North Platte River which is a tributary of The North Platte River.

6. The headgate of the proposed ditch or canal is located S 19° 11′ W 4230 feet distant from the NE corner of Section 23, T. 30 N., R. 83 W., and is in the SW¼ SE¼ of Section 23, T. 30 N., R. 83 W.

7. The said ditch or canal is to be 106.00 miles long.

8. The carrying capacity of the ditch or canal at the headgate is 1200 cu. ft. per sec.

9. (a) The nature of the material to be moved is Limestone, Sandstone, Shale, Clay, Sandy Loam.

(b) Number, length and size of tunnels #1—Dia. 14′ —2900′ long; #2—Dia. 14′ long; #3—Dia. 14′—1200′ long; #4—14′ Dia.—2000′ long; #5—14′ Dia.—1900′ long; #6—13′ Dia.—5400′ long.

(c) Number, length and size of Siphons;—#1—14′ Dia. —300′ long; #2—14′ Dia.—200′ long; #3—14′ Dia.—300′ long; #4—14′ Dia.—250′ long; #5—13′ Dia.—225′ long; #6—13′ Dia.—250′ long; #7—13′ Dia.—1100′ long; #8—13′ Dia.—250′ long; #9—13′ Dia.—400′ long; #10—13′ Dia. 250′ long; #11 9′ Dia. — 400′ long; #12 — 9′ Dia. — 3800′ long; #12—9′ Dia. — 400′ long and 6 lateral siphons Dia. from 2′ to 6′—Total aggregate length 26,700 feet.

10. The estimated cost of said works is 22,700,000 Dollars.

11. Construction on proposed work will begin within one year from date of approval of this application.

12. The time required for the completion of the ditches and other distributing works is Five years from Date of Approval.

13. The time required to complete the application of water to the beneficial uses stated in this application is ten years from Date of Approval.

14. The accompanying map is prepared in accordance with the Manual of Regulations and Instructions for Filing Applications in the State Engineer's Office and is hereby declared a part of this application.

15. A summary of the land to be irrigated is described in the following tabulation:

(Give Irrigable Acreage in Each 40-acre Subdivision. Designate Ownership of Land, Government, State or Private. If Private, Give Name of Owners)

Township	Range	Sec.	NE¼ NE¼	NE¼ NW¼	NE¼ SW¼	NE¼ SE¼	NW¼ NE¼	NW¼ NW¼	NW¼ SW¼	NW¼ SE¼	SW¼ NE¼	SW¼ NW¼	SW¼ SW¼	SW¼ SE¼	SE¼ NE¼	SE¼ NW¼	SE¼ SW¼	SE¼ SE¼	Totals
30	83																		124
30	82																		2516
30	81																		394
31	81																		4999
31	82																		4090
32	81																		2879
32	82																		799
33	79																	0	33
33	80																		4035
33	81																		3685
33	82																		440
34	78																		1995
34	79																		11267
34	80																		14411
34	81																		6134
34	82																		473
35	78																		942
35	79																		4565
35	80																		6260
35	81																		7928
35	82																		1238
36	80																		115
36	81																		6947
36	82																		700

The irrigable area in each 40-acre subdivision is stated in the sheets numbered 1 to 58 accompanying the corrected application.

Sub—Total..... 86969

Less areas under Permits, duplicated in above, which may or may not desire supplemental water supply.

30	82																		214.5
31	81																		1616
31	82																		654
32	81																		54
32	82																		148
33	80																		246
33	82																		77
34	80																		757
34	82																		45
35	82																		527
36	81																		367

Sub—Total..... 4705.5

600

This amended application received July 27, 1934, at 9:00 A. M.

EDWIN W. BURRITT,
State Engineer.

The State of Wyoming, County of Natrona, ss.

I hereby certify that the foregoing application was signed in my presence and sworn to before me by Harry W. Bashore this 26th day of July, 1934.

SIDNEY J. KENT,
(Seal) Notary Public.

My Commission expires August 8, 1937.

This permit amended by removal and expunging of endorsements, adding thereto the filing date of July 27, 1934, correction of dates of beginning construction, time of completion, beneficial use, removal and expunging of the word "Corrected" and by approval of "Petition of the Secretary of the Interior of the United States," dated February 21, 1935, approved March 21, 1935, by Edwin W. Burritt, State Engineer, and recorded in the office of the State Engineer, in Misc. Records 8, Page 191.

Dated March 21, 1935.

EDWIN W. BURRITT,
State Engineer.

Notice of commencement of work received Apr. 11, 1935.

Notice of completion of work mailed May 31, 1939. (Mailed to Wash., D. C.)

Notice of expiration of time for completion of work mailed to Casper, June 27, 1939.

The State of Wyoming, State Engineer's Office, ss.

This is to Certify that I have examined the foregoing application and do hereby grant the same subject to the following limitations and conditions:

Construction of proposed work shall begin within one year from the date of approval.

Wyoming Exhibit 31

Total Number of Acres to be Irrigated
(Signed) HARRY W. BASHORE.
Wyoming Exhibit 31

The time for completing the work shall terminate on September 14, 1939.

The time for completing the application of water to beneficial use shall terminate on September 14, 1944, and final proof of appropriation shall be made within five years thereafter.

The amount of appropriation shall be limited to one cubic foot per second of time for each seventy acres of land reclaimed on or before September 14, 1944, and the additional volume used for domestic, manufacturing, power and other beneficial purposes as called for in this permit, on or before said date.

Witness my hand this 14th day of September, A. D. 1934.

EDWIN W. BURRITT,
State Engineer.

The State of Wyoming, State Engineer's Office, ss.

This instrument was received and filed for record on the 27th day of July, A. D. 1934, at 9:00 o'clock A. M.

Recorded in Book 50 of Applications, on Page 232.

EDWIN W. BURRITT,
State Engineer.

* * * * *

WYOMING EXHIBIT 33.

Permit No. 4552 Reservoir.

F

Notice of Completion Received.....Proof Submitted.....

APPLICATION FOR A PERMIT TO CONSTRUCT THE SEMINOE RESERVOIR.

Water Division No. 1. District No.....

I, Raymond F. Walter, Chief Engineer, Bureau of Reclamation, Department of the Interior, Denver, City and County of Denver, State of Colorado, being duly sworn according to law, upon my oath say:

1. The name of the applicant The United States of America.

2. The postoffice address of the applicant, Department of the Interior, Washington, D. C.

3. The name of the stream from which the reservoir is to be filled is North Platte River, which is a tributary of .....

4. The use to which the water is to be applied is for irrigation of lands to be described in a secondary permit to be filed later; also for power, manufacturing, domestic, flood control, and other beneficial purposes.

5. The outlet of the proposed reservoir is located North 17° 45′ West 4,500 feet distant from the northwest corner of Section 16, T. 25 N., R. 84 W., and is in the (unsurveyed) Northwest quarter of Section 8, T. 25 N., R. 84 W.

The formation at the outlet consists of granite.

6. Fill out either (a) or (b).

(a) The reservoir is located in the channel of the North Platte River.

(b) The reservoir is to be filled through the..... Canal, which has a carrying capacity of.....cubic feet per second.

7. The area of the high-water line of the reservoir is 24,600 acres.

The available capacity of the reservoir is 1,360,000 acre-feet.

8. The dam is to be constructed as follows: Concrete gravity overflow type, with concrete spilling apron on downstream toe; approximate dimensions: Height 277 feet, top width 20 feet, bottom width 220 feet, length 420 feet. Contents = 260,000 cubic yards.

The water face of the dam is to be protected from wave action in the following manner: Concrete dam; no special protection needed.

9. The estimated cost of said reservoir is $6,000,000.

10. Construction of the proposed reservoir will begin within one year from the date of approval of this application.

11. The time required for the construction of the reservoir is five years from December 31, 1931.

12. The accompanying map is prepared in accordance with the Manual of Regulations and Instructions for Filing Applications in the State Engineer's Office and is hereby declared a part of this application.

(Signed) RAYMOND F. WALTER.

The State of Colorado, City and County of Denver, ss.

I hereby certify that the foregoing application was signed in my presence and sworn to before me by Raymond F. Walter this 25th day of November, 1931. George L. Evans, Notary Public. My commission expires May 9, 1933. (Seal.)

The State of Wyoming, State Engineer's Office, ss.

This is to certify that I have examined the foregoing application and have rejected same for the following reason:.....

Witness my hand this.....day of....., A. D. 19.....

.....

State Engineer.

The State of Wyoming, State Engineer's Office, ss.

This is to certify that I have examined the foregoing application and do hereby grant the same subject to the following limitations and conditions: That this reservoir be constructed under the Public Works Program as now planned or under similar program, without delay. All additions or revisions of plans to be filed in the Office of the State Engineer, Wyoming.

This permit grants only the right to the surplus water of the stream when all prior rights are satisfied.

Construction of the proposed reservoir shall begin within one year from date of approval.

The time for completing the construction of the reservoir shall terminate on December 31, 1937.

Witness my hand this seventeenth day of August, A. D. 1933.

EDWIN W. BURRITT,
State Engineer.

Notice of expiration of time for commencement of work mailed Apr. 30, 1934.

Notice of commencement of work received May 20, 1934.

Apr. 25, 1936, amended tracing and print (Project Drawings No. 16-44.17 and 16-44.18) filed with original map. This shows the plans and specifications under which the dam is being constructed.

Notice of expiration mailed Sept. 30, 1937.

Oct. 5, 1937, time for completion extended to Dec. 31, 1939.

JOHN D. QUINN,
State Engineer.

The State of Wyoming, State Engineer's Office, ss.

This instrument was received and filed for record on the 1st day of December, A. D. 1931, at 9:15 o'clock A. M.

Recorded in Book 15 of Reservoirs, on Page 151.

JOHN A. WHITING,
State Engineer.

Wyoming Exhibit 33

WYOMING EXHIBIT 34.

Permit No. 4630 Reservoir.

E[4]

Notice of Completion Received Oct. 19, 1938.

Proof Submitted.....

APPLICATION FOR A PERMIT TO CONSTRUCT THE ALCOVA RESERVOIR.

Water Division No. 1. District No.....

I, H. W. Bashore, Construction Engineer, United States Bureau of Reclamation, Casper, County of Natrona, State of Wyoming, being duly sworn according to law, upon my oath say:

1. The name of the applicant is United States of America, Department of the Interior, Bureau of Reclamation.

2. The postoffice address of the applicant is Washington, D. C.

3. The name of the stream from which the reservoir is to be filled is the North Platte River, which is a tributary of the Missouri River.

4. The use to which the water is to be applied is irrigation, domestic, manufacturing, power and other beneficial purposes.

5. The outlet of the proposed reservoir is located South 19° 17′ West 4121.2 feet distant from the NE corner of Section 23, T. 30 N., R. 83 W., for the Casper Canal; North 57° 53′ West, 1197.8 ft. distant from the SE corner of Section 24, T. 30 N., Range 83 W., for the spillway gate; South 79° 31′ West from the SE corner of Sec. 24, T. 30 N., R. 83 W.

The formation at the outlet consists of sandstone and limestone for the intake of the diversion tunnel.

6. Fill out either (a) or (b).

(a) The reservoir is located in the channel of the North Platte River.

(b) The reservoir is to be filled through the North Platte River.

7. The area of the high-water line of the reservoir is 2235 acres.

The available capacity of the reservoir is 165,765 acre-feet.

8. The dam is to be constructed as follows: Earth and rockfill. Contents = 1,500,000 cubic yards.

The water face of the dam is to be protected from wave action in the following manner: Rock riprap, varying in thickness from 3 to 15 feet.

9. The estimated cost of said reservoir is 3,339,000.00 Dollars.

10. Construction of the proposed reservoir will begin within one year from the date of approval of this application. (Note: Construction of the Alcova dam for the creation of the Alcova reservoir was commenced by the United States of America on November 27, 1933, pursuant to approval of the construction of said dam by the State Engineer of Wyoming under Sec. 122-1401, Wyo. Rev. Stat. 1931.)

11. The time required for the construction of the reservoir is 3 years from December 31, 1935.

12. The accompanying map is prepared in accordance with the Manual of Regulations and Instructions for Filing Applications in the State Engineer's Office and is hereby declared a part of this application.

(Signed) H. W. BASHORE,
Construction Engineer, United States Bureau of Reclamation.

Wyoming Exhibit 34

The State of Wyoming, County of Natrona, ss.

I hereby certify that the foregoing application was signed in my presence and sworn to before me by H. W. Bashore, Construction Engineer, this 22 day of April, 1936. Albert E. Tweed, Notary Public. My commission expires February 10, 1938. (Seal)

The State of Wyoming, State Engineer's Office, ss.

This is to certify that I have examined the foregoing application and do hereby grant the same subject to the following limitations and conditions:

Primary Permit, see Secondary Permit No. 18682.

This permit grants only the the right to use surplus water of the stream when all prior rights are satisfied.

Construction of the proposed reservoir shall begin within one year from date of approval.

The time for completing the construction of the reservoir shall terminate on December 31, 1938.

Witness my hand this 18th day of December, A. D. 1936.

JOHN D. QUINN,
State Engineer.

The State of Wyoming, State Engineer's Office, ss.

This instrument was received and filed for record on the 25th day of April, A. D. 1936, at 9:45 o'clock A. M.

EDWIN W. BURRITT,
State Engineer.

Recorded in Book 16 of Reservoirs, on Page 46.

Notice of commencement of work received Feb. 24, 1937.

Notice of expiration mailed Sept. 30, 1938.

WYOMING EXHIBIT 35.

Permit No. 18681.

E

Notice of Completion Received..... Proof Submitted.....

APPLICATION FOR A PERMIT TO DIVERT AND APPROPRIATE THE WATER OF THE STATE OF WYOMING.

Seminoe Power Plant.

Water Division No. 1. District No.....

I, H. W. Bashore, Construction Engineer, United States Bureau of Reclamation, Casper, County of Natrona, State of Wyoming, being duly sworn according to law, upon my oath say:

1. The name of the applicant, United States of America, Department of the Interior, Bureau of Reclamation.

2. The postoffice address of the applicant is Washington, D. C.

3. The use to which the water is to be applied is development of power.

4. The name of the ditch or canal is penstocks through Seminoe Dam to power house.

5. The source of the proposed appropriation is the North Platte River supplemented by storage from Seminoe reservoir, which is a tributary of the Missouri River.

6. The headgate of the proposed penstocks are located South 64° 25′ West 1935.0 feet distant from the NE corner of Section 8, T. 25 N., R. 84 W., and is in the NE¼ of Section 8, T. 25 N., R. 84 W.

7. The said penstocks are to be 155.4; 158.03; 157.55 feet long.

8. The carrying capacity of the ditch or canal at the headgate is 1990 cu. ft. per sec.

9. (a) The nature of the material to be removed is granite.

(b) Number, length and size of penstocks—three, each 10′ in diameter.

(c) Number, length and size of flumes, none.

10. The estimated cost of said works is 4,750,000 Dollars.

11. Construction on proposed work will begin within one year from date of approval of this application.

12. The time required for the completion of the ditches and other distributing works is Dec. 31, 1939.

13. The time required to complete the application of water to the beneficial uses stated in this application is 5 years from December 31st, 1939.

14. The accompanying map is prepared in accordance with the Manual of Regulations and Instructions for Filing Applications in the State Engineer's Office and is hereby declared a part of this application.

15. The land to be irrigated is described in the following tabulation:

(Give irrigable acreage in each 40-acre subdivision. Designate ownership of land, Government, State or Private. If Private, give names of owners.)

Township	Range	Sec.	NE¼ NE¼	NE¼ NW¼	NE¼ SW¼	NE¼ SE¼	NW¼ NE¼	NW¼ NW¼	NW¼ SW¼	NW¼ SE¼	SW¼ NE¼	SW¼ NW¼	SW¼ SW¼	SW¼ SE¼	SE¼ NE¼	SE¼ NW¼	SE¼ SW¼	SE¼ SE¼	Totals

No land involved.

16. Power Plant Data:
    (a) Reservoir dead storage capacity—55,000 acre feet.
    (b) Reservoir dead storage water surface elevation—6252 feet.
    (c) Minimum effective power head—117 feet.
    (d) Flow at minimum power head—1990 sec. feet.
    (e) Horsepower at minimum effective head—15,000.
    (f) Ultimate maximum horsepower to be developed—45,000.
    (g) Turbines: 3—15,000 h. p. at 175 ft. head.
    Generators: 3—12,000 Kv-a 90% p. f. 6900-volt, 3-phase, 60-cycle, 225 r.p.m.
17. Water will be returned to the stream at a point South 69° 07′ East, 1874.0 feet distant from the NE corner of Section 8, Township 25 N., Range 84 W., and is in the NE¼ of Section 8, Township 25 N., Range 84 W.

Total Number of Acres to be Irrigated.....

(Signed) H. W. Bashore,
Construction Engineer, United States Bureau of Reclamation.

The State of Wyoming, County of Natrona, ss.

I hereby certify that the foregoing application was signed in my presence and sworn to before me by H. W. Bashore, Construction Engineer, this 22 day of April, 1936. Albert E. Tweed, Notary Public. My commission expires February 10, 1938. (Seal)

Wyoming Exhibit 35

The State of Wyoming, State Engineer's Office, ss.

This Is To Certify that I have examined the foregoing application and do hereby grant the same subject to the following limitations and conditions:

The use of water for the development of power under this permit shall be inferior to and shall in no way interfere with the use of water for irrigation or other superior and preferred uses, irrespective of the date of priority of such use and shall be subject to such regulation as may be imposed by legislation or other lawful restriction.

This permit grants only the right to use surplus water of the stream when all prior rights are satisfied.

Construction of proposed work shall begin within one year from the date of approval.

The time for completing the work shall terminate on December 31, 1939.

The time for completing the application of water to beneficial use shall terminate on December 31, 1944, and final proof of appropriation shall be made within five years thereafter.

The amount of appropriation shall be limited to the amount beneficially used for development of power on or before December 31, 1944, not to exceed 1990 cubic feet of water per second of time.

Witness my hand this 18th day of December, A. D. 1936.

JOHN D. QUINN,
State Engineer.

The State of Wyoming, State Engineer's Office, ss.

This instrument was received and filed for record on the 25th day of April, A. D. 1936, at 9:45 o'clock A. M.

JOHN D. QUINN,
State Engineer.

Recorded in Book 61 of Applications, on Page 34.

Notice of commencement of work received Feb. 24, 1937.

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La Prele Project

Summary of Acreages Under Permits

Permits	Supplemental Permit	Supply Adjud.	Original Permit	Supply Adjud.
15661	298	28		
15664	70	30		
15869	67	40		
15876	85	70		
16986			3391	1809
17956	17013	8555		
17957	17013	8555		
17955	17601.5	8855		
18709	104			
1430 E	50	50	8864	7999
1670 E			114	86
2968 E			68	68
4054 E			274	244
4055 E	135	69		
4139 E			34	30
4530 E			2913	60
4531 E	113		658	15
4589 E			10	
4682 E	128			
4759 E	44	44		
4760 E	16865	8555	34	
	Totals		16360	10311

Reservoirs

	Acre Feet Capacity	Acre Feet Adjudicated
728 R	15106	15106
1581 R	4894	4894
4636 R	62.4	
	20062.4	20000

Wyoming Exhibit 58

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COLORADO EXHIBIT 39.

Jackson County Investigations.

Irrigated and Irrigable Lands Along North Platte River and Tributaries.
Segregations According to Sources of Water Supply.

Source of Supply	Irrigated Acres Items	Irrigated Acres Sums	Irrigated Acres Totals	Irrigable Acres Items	Irrigable Acres Sums	Irrigable Acres Totals	Combined Items	Combined Sums	Combined Totals
Big Grizzly Creek	17160			3460			20620		
Little Grizzly Creek	12910			920			13830		
Sum—Above Origin N. Platte R.		30070			4380			34450	
Misc.—Origin to Walden Road	440			100			540		
Roaring Fork of N. Platte R.	13080			2810			15890		
Sum—Origin to Walden Road		13520			2910			16430	
Total Above Walden Road			43590			7290			50880
North Fork of N. Platte R.	17320			3280			20600		
(Above Higho)	(14240)			(1210)			(15450)		
Misc.—Walden Road to Cowdrey	2400			—			24		
Sum—Walden Road to Cowdrey		19720			3280			23000	
Total—N. Platte Above Cowdrey			63310			10570			73880
Michigan River: Above Walden	17870			3070			20940		
(Above Haworth School)	(5220)			(1520)			(6740)		
(Above Lindland)	(3890)			(1520)			(5410)		
Illinois R. Above Walden	25240			8810			34050		
(Above Rand)	(5970)			(1700)			(7670)		
(Willow Creek-Rand)	(3180)			(1700)			(4880)		
Lower Michigan River	5530			420			5950		
Sum—Michigan R.-Cowdrey		48640			12300			60940	
Canadian R. Above Cowdrey	10850			2400			13250		
Misc.—Cowdrey to Northgate	5240			1560			6800		
Sum—Cowdrey to Northgate		16090			3960			20050	
Total Above Northgate			128040			26830			154870
Misc. below Northgate	3770	3770		3560	3560		7330	7330	
Total in Jackson County			131810			30390			162200

Aerial Photographs 1937—Field Investigations 1937-1939—Compiled April 1940.

082-40-91434

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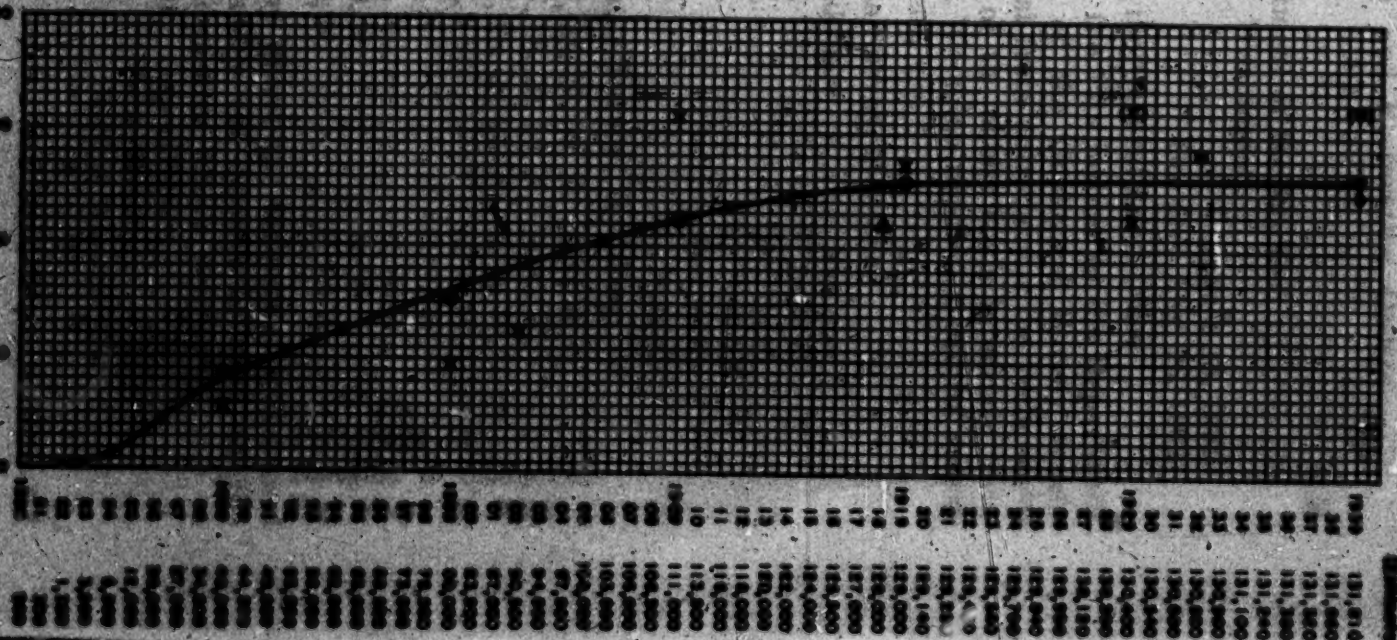
COLORADO WATER CONSERVATION BOARD—Engineering Department

JACKSON COUNTY INVESTIGATIONS

IRRIGATED ACREAGE IN JACKSON COUNTY, COLORADO

NEB., 1, WYO. and COLO.
UNITED STATES INTERVENER
COL. EXHIBIT NO. 40

× Reports of the U.S. Census Bureau
● Established from Court Records showing dates of construction of ditches and use of water for irrigation purposes
■ Report of U.S. Army Engineers in House Document No. 197 - 75 d. Congress, 2 d. Session
▲ Estimated in Conklin-Hooker Report - 1918
◆ Reported by County Assessor of Jackson County for assessment purposes
● Determined by Colorado Water Conservation Board
( ) Indicates irrigable acreage



619

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UNITED STATES EXHIBIT 7A.

Withdrawal and Restoration Orders

3843-1902 1902—1911

L. & R. R. Div. A.M.

Department of the Interior.
Washington.

August 18, 1902.
See also Aug. 26, 1902.

The Commissioner of the General Land Office

Sir: In a letter of the 15th instant to the Department, the Acting Director of the Geological Survey recommended the withdrawal from entry under the reclamation act of June 17, 1902, of the public lands in certain townships in Montana and Wyoming pending a careful survey and examination thereof, viz:

Malta Survey, Montana.

	Townships	Ranges
Telegram to Greatfalls, Mont., Aug. 21, 1902.	28 N.	31 to 39 E.
	29 N.	29 " 38 E.
	30 N.	27 " 37 E.
	31 N.	30 " 36 E.
	32 N.	31 " 34 E.

Sweetwater Survey, Wyoming.

All	T. 27, 28, 29, 30, N.	R. 84 W.
"	T. 27, 28, 29, 30, N.	R. 85 W.
"	T. 27, 28, 29, 30, N.	R. 86 W.
Secs. 1 to 12 inc.	T 28, N	R. 87 W.
" 19 " 36 inc.	T 29, N	R. 87 W.
" 1 " 12 inc.	T 28, N	R. 88 W.
All	T. 29, N.	R. 88
"	T. 29, N.	R. 89 W.

Telegram to Douglas & Cheyenne Wy. Aug. 21, 1902

I accordingly hereby direct the temporary withdrawal from entry, except under the homestead laws, of the public lands in the townships above described.

Very respectfully,
THOS. RYAN,
Acting Secretary.

* * * * *

United States Exhibit 7A

740-1903
L. & R. Div. A. M.

Department of the Interior.

Washington.

February 11, 1903.

The Commissioner of the General Land Office.

Sir: In a letter of the 6th instant to the Department the Director of the Geological Survey recommended that the public lands in certain designated townships in Nebraska be withdrawn from entry, except under the homestead laws, under the provisions of the act of June 17, 1902, 32 Stat. 388.

I enclose a copy of the letter for your information and hereby direct the temporary withdrawal of the public lands in the townships described in the letter from settlement, entry or other form of disposition under the public land laws, except the homestead laws. All lands entered and entries made under the homestead laws within the limits of this withdrawal, during its continuance shall be subject to all the provisions, limitations, charges, terms and conditions of the act mentioned.

This withdrawal is made in connection with the North Platte River Survey, Nebraska.

Very respectfully,

E. A. Hitchcock, Secretary.

United States Exhibit 7A

Address all communications to
"Director, U. S. Geological Survey,
Washington, D. C."

In reply please refer to F and date of this letter.

Subject: Request for withdrawal
MB in Nebraska.

Department of the Interior
United States Geological Survey

Washington, D. C., Feb. 6, 1903.

The Honorable, The Secretary of the Interior, Washington, D. C.

Sir: As a result of preliminary investigations in the field during the past season, I have the honor to request the withdrawal from entry, except homesteads, as provided by the act of June 17, 1902 (32 Stat. 388) of the public lands in the following townships:

North Platte Survey, Nebr.

Township	19 N.,	Ranges	49 to 56 W., inclusive,
"	20 N.,	"	50 to 58 W., "
"	21 N.,	"	52 to 58 W., "
"	22 N.,	"	54 to 58 W., "
"	23 N.,	"	55, 56, 57, and 58 W.

It is the intention to make a careful examination of these lands and the drainage area of the North Platte River during the coming season in order to obtain further information concerning the feasibility of irrigating the lands in question.

Very respectfully,

CHAS. D. WALCOTT, Director.

EDW

United States Exhibit 7A

748-1903.
L. & R. R. Div. A.M.

Department of The Interior.
Washington.

January 27, 1904.

The Commissioner of the General Land Office.

Sir: In a letter of the 23rd instant to the Department the Director of the Geological Survey recommended that certain described lands in the State of Wyoming, excepting any tracts the title to which has passed out of the United States, be withdrawn from public entry for irrigation works under the first form of withdrawal authorized by section 3, Act of June 17, 1902, 31 Stat. 388.

I enclose a copy of the letter for your information and hereby direct that the public lands in the area described therein be temporarily withdrawn from any form of disposal whatever.

This withdrawal is for the Pathfinder reservoir site and the greater portion of the lands mentioned in the letter of the Director have been heretofore withdrawn under the second form of withdrawal provided by the act.

Very respectfully,

E. A. Hitchcock, Secretary.

Address all communications to
"Director, U. S. Geological Survey,
Washington, D. C."

In reply please refer to F.N. and date of this letter.

Subject: Request for reservation of lands, Pathfinder Res. Site, Wyoming.

HVL Department of the Interior HLS
United States Geological Survey

Washington, D. C., Jan. 23, 1904.

The Honorable The Secretary of the Interior.

Sir: I have the honor to recommend that the follow-

ing described lands, excepting any tracts the title to which has passed out of the United States, be withdrawn from public entry for irrigation works, under the first form of withdrawal, as provided in Sec. 3, Act of June 17, 1902 (32 Stat., 388).

North Platte Project—Wyoming.

6th Principal Meridian.

Pathfinder Reservoir Site.

Township 26 North, Range 84 West:
Sec. 4, NW4, and W2 SW4
Sec. 5, Lot 3, SE4 NW4, and E2
Sec. 8, SE4 NE4 and N2 NE4
Sec. 9, NW4 NW4, S2 NW4, SE4 and N2 SW4
Sec. 10, SW4 SW4
Sec. 15, NW4 NW4
Sec. 16, NE4 NE4

Township 27 North, Range 84 West;
Sec. 5, Lots 2, 3 and 4, and SW4 SW4
Sec. 6, Lots 1, 2 and 3, SW4 NE4, SE4NW4SE4, and E2 SW4
Sec. 7, W2SE4, SW4, and N2
Sec. 8, NW4 NW4
Sec. 18, all
Sec. 19, Lot 1, E2 NW4, E2 SW4, and E2
Sec. 20. SW4NW4, and SW4
Sec. 28, SW4NW4 and SW4
Sec. 29, NW4, NW4SW4, E2SW4, and E2
Sec. 30, NE4, NE4NW4, and NE4SE4
Sec. 32, E2 NW4, NE4 SW4 and E2
Sec. 33, NW4 NE4, and W2

Township 27 North, Range 85 West;
Sec. *12*, E2 SE4
Sec. *13*, SE4NW4, E2SW4, and E2

Township 28 North, Range 85 West;
Sec. *1*, S2 NE4, SE4, and S2 SW4
Sec. *11*, E2 NE4
Secs. *12* and *13*, all

United States Exhibit 7A

Sec. *14*, NE4NE4, S2NE4, SE4, and E2SW4
Sec. *23*, NE4, SE4 SE4, and N2SE4
Sec. *24*, all
Sec. *25*, N2SE4, and N2

Township 29 North, Range 83 West;

Sec. *19*, Lot 2, SE4NW4, and SW4

Township 29 North, Range 85 West;

Sec. *5*, Lot 3, NE4, S2 NW4SE4SE4, N2 SE4, NE4, SW4, W2 SW4
Sec. *6*, Lot 7, S2 NE4, SE4, and SE4 SW4
Sec. *7*, N2NE4, and NW4
Sec. *11*, E2 SE4
Sec. *12*, W2 NE4, NW4, NE4 SW4, and W2 SW4

Township 30 North, Range 85 West;

Sec. *25*, SW4 SE4, and S2 SW4
Sec. *26*, SE4 SE4, NW4 SW4, and S2 SW4
Sec. *27*, S2 NE4, and SE4
Sec. *28*, SW4 SW4
Sec. *29*, SW4 NE4, S2 NW4, and S2
Sec. *30*, SE4 NE4, and SE4
Sec. *32*, E2 NW4, E2 SW4 and E2
Sec. *33*, NW4 NW4, SE4 and S2 SW4

All the above lands, with the exception of those in T. 29 N., R. 83 W., were withdrawn under the second form of withdrawal by order of the Secretary of the Interior of August 18, 1902.

Very respectfully,

CHARLES WALUTT,
Director.
A.P.D.

* * * * *

United States Exhibit 7A

748-1903. A. M.
L.&R.R.Div.

Department of the Interior.
Washington.

May 3, 1904.

The Commissioner of the General Land Office.

Sir: In a letter of the 28th ultimo to the Department, the Director of the Geological Survey recommended that certain described lands in the State of Nebraska, excepting any tracts the title to which has passed out of the United States, be withdrawn under the second form of withdrawal, authorized by Section 3 of the Act of June 17, 1902 (32 Stat. 388), it being believed that such lands are susceptible of irrigation.

I enclose a copy of the letter for your information and hereby withdraw the public lands in the areas described therein from settlement, entry, or other form of disposal under the public land laws, excepting the homestead laws. All lands entered and entries made under the homestead laws, within the limits of this withdrawal, during its continuance, shall be subject to all the provisions, limitations, charges, terms, and conditions of the act mentioned.

You are directed to give the proper instructions in the premises to the Register and Receiver of the land district in which the lands are located.

This withdrawal is in connection with the North Platte Project.

Very respectfully,

E. A. Hitchcock,
Secretary.

United States Exhibit 7A

Address all communications to
"Director, U. S. Geological Survey,
Washington, D. C."

In reply please refer to F. H. N. and date of this letter.

Subject: Withdrawal, North Platte Project, Nebraska.
LLM-SS

Department of the Interior
United States Geological Survey
Washington, D. C.

April 28, 1904.

The Honorable, The Secretary of the Interior.

Sir: I have the honor to recommend that the following described lands, excepting any tracts the title to which has passed out of the United States, be withdrawn under the second form of withdrawal, as provided in section 3 of the act of June 17, 1902 (32 Stat., 388). This land is believed to be susceptible of irrigation, and is to remain subject to homestead entry only, under the conditions and limitations of the said act.

North Platte Project,

Nebraska.

Sixth Principal Meridian.

Second Form of Withdrawal.

T. 21 N., R. 50 W., Secs. 6, 7, 8, 9, 10, 11, 13 to 36 inclusive.

T. 21 N., R. 51 W., All.

T. 22 N., R. 51 W., Secs. 7, 8, 9, 10, 11, 13 to 36 inclusive.

T. 22 N., R. 52 W., All.

T. 23 N., R. 52 W., Secs. 19, 30, 31, and 32.

T. 22 N., R. 53 W., All.

T. 23 N., R. 53 W., Secs. 19 to 36 inclusive.

United States Exhibit 7A

T. 23 N., R. 54 W., All.

T. 24 N., R. 54 W., Secs. 31 and 32.

T. 24 N., R. 55 W., Secs. 7, 17 to 21 inclusive; 26 to 36 inclusive.

T. 24 N., R. 56 W., Secs. 9 to 16 inclusive; 19 to 36 inclusive.

T. 24 N., R. 57 W., Secs. 3 to 10 inclusive; 15 to 36 inclusive.

T. 25 N., R. 57 W., Secs. 18, 19, 20, and 28 to 36 inclusive.

T. 24 N., R. 58 W., All.

T. 25 N., R. 58 W., All.

A copy of this letter is inclosed for transmission to the General Land Office.

Very respectfully,

CHAS. WALUTT,
Director.

749-1903 A.M.
L.&R.R.Div.

Department of the Interior,
Washington.

June 13, 1904.

The Commissioner of the General Land Office.

Sir: In a letter of the 9th instant to the Department, the Acting Director of the Geological Survey recommended that certain described lands in the State of Nebraska, excepting any tracts the title to which has passed out of the United States, be withdrawn under the second form of withdrawal authorized by section 3, act of June 17, 1902—32 Stat. 388.

I enclose a copy of the letter for your information, and hereby temporarily withdraw the public lands within the areas described therein, from settlement, entry or other

United States Exhibit 7A

form of disposal under the public land laws, except the homestead laws. All lands entered and entries made under the homestead laws, within the limits of this withdrawal, during its continuance, shall be subject to all the provisions, limitations, charges, terms and conditions of the act mentioned.

This withdrawal is in connection with the North Platte Project, and I direct that you give proper instructions in the premises to the Register and Receiver of the land district in which the lands are situated.

Very respectfully,

E. A. Hitchcock,
Secretary.

Address all communications to
"Director, U. S. Geological Survey,
Washington, D. C."

In reply please refer to FHN and date of this letter,

Subject: Withdrawals, North Platte Project,
Nebraska, 6th Principal Meridian.

Department of the Interior LLM-EDW
United States Geological Survey
Washington, D. C.

The Honorable, June 9, 1904.

The Secretary of the Interior, Washington, D. C.

Sir: I have the honor to recommend that the following described tracts of land, except any the title to which has passed out of the United States, be withdrawn for irrigation purposes under the second form of withdrawal, Sec. 3, Act of June 17, 1902, in connection with the North Platte Project in the State of Nevada, 6th Principal Meridian.

I inclose a copy for transmission to the General Land Office.

North Platte Project, State of Nebraska,
6th Principal Meridian.

N½ of T. 14 N., Rs. 32 to 37, inclusive.

United States Exhibit 7A

S½ of T. 15 N., Rs. 32 to 36, inclusive.
T. 15 N., R. 37 to 41, inclusive.
S½ of T. 16 N., Rs. 39-40.
All of T. 16 N., Rs. 41 to 43, inclusive.
S½ of T. 17 N., R. 42.
T. 17 N., Rs. 43 to 45, inclusive.
T. 17 N., Rs. 43-45, inclusive.
S½ T. 18 N., Rs. 43 to 44 inclusive.
T. 18 N., Rs. 45 to 49, inclusive.
T. 19 N., Rs. 45 to 48, inclusive.
S½ T. 20 N., R. 49.

Very respectfully,

H. C. RIZER,
Acting Director G.B.H.

749-1903 A.M.
L.&R.R.Div.

Department of the Interior.
Washington.

June 21, 1904.

The Commissioner of the General Land Office.

Sir: In a letter of the 18th instant to the Department the Acting Director of the Geological Survey recommended that certain described lands in the State of Nebraska, excepting any tracts the title to which has passed out of the United States, be withdrawn from public entry under the second form of withdrawal authorized by section 3 of the act of June 17, 1902—32 Stat. 388—the land being believed to be susceptible of irrigation.

I enclose a copy of the letter for your information, and I hereby temporarily withdraw the public lands within the areas described therein from settlement, entry or other form of disposal under the public land laws, except the homestead laws.

The lands entered and entries made under the homestead laws within the limits of this withdrawal during

United States Exhibit 7A

its continuance, shall be subject to all of the provisions, limitations, charges, terms and conditions of the act mentioned.

This withdrawal is in connection with the North Platte Project, and I direct that you give the proper instructions in the premises to the Register and Receiver of the land district in which the lands are situated.

Very respectfully,

E. A. HITCHCOCK,
Secretary.

Address all communications to
"Director, U. S. Geological Survey,
Washington, D. C."

In reply please refer to F.H.N. and date of this letter,

Subject: Withdrawal of land, North Platte Project, Nebraska.

LLM-SS

Department of the Interior
United States Geological Survey

Washington, D. C., June 18, 1904.

The Honorable, The Secretary of the Interior.

Sir: I have the honor to recommend that the following-described lands, excepting any tracts the title to which has passed out of the United States, be withdrawn from public entry, for irrigation works under the second form of withdrawal, as provided in section 3 of the Act of June 17, 1902 (32 Stat., 388). This land is believed to be susceptible of irrigation, and is to remain subject to homestead entry only, under the conditions and limitations of said act, in connection with the North Platte Project in the State of Nebraska.

I enclose copy of this letter for transmission to the General Land Office.

United States Exhibit 7A

North Platte Project
Nebraska.

Sixth Principal Meridian

All Twps. 14 to 18 N., inclusive; R. 30 W.
Twp. 14 N., R. 31 W.; all Secs. 1 to 18 inclusive.
All Twps. 15 to 18 N., inclusive, R. 31 W.
Twp. 15 N., R. 32 W.; all Secs. 1 to 18 inclusive.
All Twps. 16 to 18 N., inclusive, R. 32 W.
Twp 15 N., R. 33 W.: all Secs. 1 to 18, inclusive.
All Twps. 16 to 18 N., inclusive; R. 33 W.
Twp. 15 N., R. 34 W.: all Secs. 1 to 18, inclusive.
All Twps. 16 to 18 N., inclusive; R. 34 W.
Twp. 15 N., R. 35 W.: all Secs. 1 to 18, inclusive.
All Twps. 16 to 18 W. inclusive; R. 35 W.
Twp. 15 N., R. 36 W.: all Secs. 1 to 18, inclusive
All Twps. 16 to 18, inclusive; R. 36 W.
All Twps. 16 to 18, inclusive; R. 37 W.
All Twps. 16 to 18, inclusive; R. 38 W.
Twp. 16 N., R. 39 W.: all Secs. 1 to 18, inclusive.
All Twps. 17 and 18 N., R. 39 W.
Twp. 16 N., R. 40 W.: all Secs. 1 to 18, inclusive.
All Twps. 17 and 18 N., R. 40 W.
All Twps. 17 and 18 N., R. 41 W.
Twp. 17 N., R. 42 W.: all Secs. 1 to 18, inclusive.
All Twp. 18 N., R. 42 W.
Twp. 18 N., R. 43 W.: all Secs. 1 to 18, inclusive.
Twp. 18 N., R. 44 W.: all Secs. 1 to 18, inclusive.
All Twp. 19 N., Rs. 43 and 44 W.

Very respectfully,

H. C. Rizer,
Acting Director.
A.P.D.

United States Exhibit 7A

749-1903
L.&R.R.Div.

J.I.P.

Department of the Interior.
Washington.

June 27, 1904.

The Commissioner of the General Land Office.

Sir: I hand you herewith copy of a letter from the Director of the Geological Survey, dated the 27th instant, in which he recommends for reasons stated, that Township 17 North, Range 46 West of the 6th Principal Meridian, Nebraska, be withdrawn from entry under the second form of withdrawal provided for under the act of June 17, 1902—32 Stat. 388.

As this is one of the tracts to be withdrawn from the operation of the Kinkaid law, I concur in the recommendation of the Director, and said tract is hereby withdrawn under the second form of withdrawal authorized by the act of June 17, 1902—32 Stat. 388.

Said lands are withdrawn from entry except under the homestead laws, and all entries made under the homestead laws, within the areas hereby withdrawn, during said withdrawal, shall be subject to all of the provisions, limitations, charges, terms and conditions of said act of June 17, 1902.

You are directed to wire this withdrawal to the local officers within whose districts these lands lie.

Very respectfully,

(Signature illegible),
Acting Secretary.

United States Exhibit 7A

Address all communications to
"Director, U. S. Geological Survey,
Washington, D. C."

In reply please refer to FHN and date of this letter.
Subject: Withdrawals. APD-EDW

Department of the Interior
United States Geological Survey

Washington, D. C., June 27, 1904.

The Honorable, The Secretary of the Interior,
Washington, D. C.

Sir: I have received by Departmental reference, the letter of the Acting Commissioner of the General Land Office, dated June 21, 1904.

This letter transmits a telegram received by the General Land Office from Reuben Lisco of Lodgepole, Nebraska, recommending the segregation of T. 17, Rs. 45 and 46.

T. 17, R. 45 was included in the letter from this office of June 9 recommending withdrawals in western Nebraska, and these withdrawals were made by Departmental order on June 13.

It is not feasible to obtain an examination of the other township within the time contemplated for a report upon this matter, but under informal instructions from your office, a telegram was directed to the engineer in charge, inquiring if any more withdrawals were to be recommended under the Kinkaid Law, and the following reply has been received, dated Denver, June 24:

"I have no more withdrawals under Kinkaid Law to offer. Field."

The aim appears to have been to withdraw lands in the vicinity mentioned in this telegram only on the North side of the North Platte River, apparently with the idea that it might be feasible to take out the large canal on the North side.

As T. 17, R. 46 contained practically no land on the

North side of the river, it was not recommended for withdrawal. However, in view of the statement in this telegram, that a portion of the township is irrigable and of the further fact that a considerable portion of the lands withdrawn will probably be proved incapable of irrigation in the near future and restored to the public domain, it appears wise to withdraw the township mentioned in order that an investigation may be made as to its irrigability.

I, therefore, recommend that T. 17 N., R. 46 W., of the 6th principal Meridian be withdrawn from entry, under the second form of withdrawal.

A copy of this letter is inclosed for transmission to the General Land Office.

Very respectfully,

H. C. RIZER,
Acting Director. A P D

Inclosure.

748-749-1903 A.M.
L.&R.R.Div.

Department of the Interior,
Washington.

September 20, 1904.

The Commissioner of the General Land Office.

Sir: In a letter of the 14th instant to the Department, the Acting Director of the Geological Survey recommended that certain described lands in the States of Wyoming and Nebraska, excepting any tracts the title to which has passed out of the United States, be withdrawn from public entry for irrigation works, under the first form of withdrawal authorized by Section 3 of the act of June 17, 1902—32 Stat. 388.

I enclose a copy of the letter for your information and hereby temporarily withdraw from any form of disposition whatever the public lands within the areas described

therein, and direct that you issue the proper instructions in the premises to the Registers and Receivers of the land districts in which the lands are situated.

This withdrawal is under the North Platte Project.

Very respectfully,

THOS. RYAN,
Acting Secretary.

Address all communications to
"Director, U. S. Geological Survey,
Washington, D. C."

In reply please refer to FHN and date of this letter.

Subject: Withdrawals, North Platte Project, Wyoming-Nebraska. HVL-BH

Department of the Interior
United States Geological Survey

Washington, D. C., September 14, 1904.

The Honorable Secretary of the Interior, Department of the Interior, Washington, D. C.

Sir: I have the honor to recommend that the following described lands, except any tracts the title to which has passed out of the United States, be withdrawn from public entry for irrigation works, under the first form of withdrawal, as provided in Sec. 3, Act of June 17, 1902, (32 Stat., 388).

North Platte Project, Wyoming-Nebraska
6th Principal Meridian.
Wyoming.

T. 24 N., R. 60 W., N½ Sec. 4, N½ Sec. 5, N½ Sec. 6.
T. 25 N., R. 60 W., All Sections 31 and 32, N½ Sec. 33.
T. 25 N., R. 61 W., N½ Sec. 26, all sec. 27, N½ Sec. 35, all sec. 36.

United States Exhibit 7A

6th Principal Meridian,
Nebraska.

T. 23 N., R. 53 W., all Sections 28, 29, 30, 31, 32 and 33.
T. 23 N., R. 54 W., all Sections 5, 6, 7, 8, 9, 10, 15, 16 and 22.

Very respectfully,

H. C. RIZER,
Acting Director.
FHN MB

748-1903.
L. & R. R. Div. C. H. R.

Department of the Interior,
Washington.

J.K.P. November 21, 1904.

The Commissioner of the General Land Office.

Sir: In a letter of the 17th instant to the Department the Acting Director of the Geological Survey recommended that certain described lands in the State of Wyoming, excepting any tracts the title to which has passed out of the United States, be withdrawn from public entry for irrigation works under the first form of withdrawal authorized by section 3 of the act of June 17, 1902—32 Stat. 388.

I enclose a copy of the letter for your information and I hereby temporarily withdraw from any form of disposition whatever the public lands within the areas described therein, and direct that you issue the proper instructions in the premises to the local land officers.

This withdrawal is in connection with the North Platte Project, Wyoming.

Very respectfully,

E. A. HITCHCOCK,
Secretary.

United States Exhibit 7A

Address all communications to
"Director, U. S. Geological Survey,
Washington, D. C."

In reply please refer to F.H.N. and date of this letter.

Subject: North Platte Project, Wyo. HVL-SS

Department of the Interior
United States Geological Survey.

Washington, D. C., Nov. 17, 1904.

The Honorable The Secretary of the Interior.

Sir: I have the honor to recommend that the following described lands, excepting any tracts the title to which has passed out of the United States, be withdrawn from public entry, for irrigation works, under the first form of withdrawal, as provided in section 3, Act of June 17, 1902 (32 Stat., 388):

First Form of Withdrawal

North Platte Project
Sixth Principal Meridian, Wyo.

T. 28 N., R. 67 W.: SE¼ Sec. 35; SW¼ Sec. 36.
" 27 " " 67 " Secs. 1, 2, 10, 11, 12, 13, N½ Sec. 14, N½ Sec. 15.
" 27 " " 66 " SW¼ Sec. 5; S½ Sec. 6; Sec. 7; Sec. 8; Sec. 9; SW¼ Sec. 10; Secs. 15, 16, 17, 18; NE¼ Sec. 19; N½ Sec. 20; Secs. 21, 22; S½ Sec. 23; Secs. 26, 27; NE¼ Sec. 28.
" 25 " " 61 " S½ Sec. 26.

Very respectfully,

H. C. Rizer,
Acting Director. A P D

* * * * *

United States Exhibit 7A

748-B-1905. AM
L.&R.R.Div. H.L.K.

Department of the Interior,
Washington.

August 1, 1905.

The Commissioner of the General Land Office.

Sir: In a letter of the 28th instant to the Department, the Acting Director of the Geological Survey recommended that certain described lands in the State of Wyoming, be withdrawn from public entry for irrigation works under the first form of withdrawal authorized by Sec. 3 of the act of June 17, 1902 (32 Stat., 388).

I enclose a copy of the letter for your information and hereby temporarily withdraw from any form of disposition whatever the public lands within the areas described therein and direct that you give the proper instructions in the premises to the local land officers. I also direct that the proper notation be made on the records of your office and the local office showing the withdrawal, even if certain of the lands are unsurveyed, so that the record will cover both classes of land.

This withdrawal is in connection with the North Platte Project, Wyoming.

Very respectfully,

THOS. RYAN,
Acting Secretary.

United States Exhibit 7A

Address all communications to
"Director, U. S. Geological Survey,
Washington, D. C."

In reply please refer to (initials illegible) and date of this letter.

Subject: Withdrawal of lands under North Platte Project.

Department of the Interior
United States Geological Survey

Washington, D. C., July 28, 1905.

GBF

The Honorable The Secretary of the Interior.

Sir: I have the honor to recommend that the following described lands, excepting any tracts the title to which has passed out of the United States, be withdrawn from public entry for irrigation works, under the first form of withdrawal, as provided in Sec. 3, Act of June 17, 1902 (32 Stat. 388).

North Platte Project—Wyoming.

T. 25 N., R. 61 W., Secs. 19, 20, 29 and 30.
T. 26 N., R. 65 W., Secs. 2, 3, 10 and 11.

Very respectfully,

H. C. Rizer,
Acting Director. APD CAM

United States Exhibit 7A

UNITED STATES EXHIBIT 7b.

Address All Communications to
The Commissioner

United States
Department of the Interior
Bureau of Reclamation
Washington.

Office of the Commissioner October 1, 1929

The Secretary of the Interior,

Sir: It is recommended that the following described lands, excepting any tract the title to which has passed out of the United States, be withdrawn from public entry, under the first form of withdrawal, as provided in Section 3, Act of June 17, 1902, (32 Stat., 388):

Seminole Reservoir Site, Wyoming,
Sixth Principal Meridian

25 T. 23 N., R. 84 W., all Sections 1, 2, 3, 10, 11, 14, 15, 23, 24, 26, 27, 28, 33 and 34.

24 T. 24 N., R. 83 W., all Sections 17, 18, 19, 20, 21, 22, 26, 27, 28 and 35.

" T. 25 N., R. 83 W., all Section 31.

25 T. 24 N., R. 84 W., all Sections 2, 3, 4, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 22, 23, 24, 26, 27, 28, 34, 35 and 36.

" T. 25 N., R. 84 W., all Sections 4, 5, 8, 9, 10, 15, 16, 21, 22, 23, 24, 25, 26, 27, 34, 35, 36.

" T. 26 N., R. 84 W., all Sections 27, 33 and 34.

26 T. 24 N., R. 85 W., all Section 13.

Respectfully,

P. W. DENT,
Acting Commissioner.

Department of the Interior Oct 2, 1929.

The lands described are hereby reserved as recommended

and the Commissioner of the General Land Office will cause the records of his office and of the local land office to be noted accordingly.

Jos. M. Dixon,
First Assistant Secretary.

Copy to U.S.G.S.,
G.L.O.

To Reg. Cheyenne, promulgating order.
To O for notation, then "D." *A.R.F.*
10/9/29—'O'
Noted 10/16/29—M.L.A. "O"

*Matter in italics appears in ink on the original.

• • • • •

Address All Communications to
The Commissioner

United States
Department of the Interior
Bureau of Reclamation
Washington

Office of the Commissioner Jan. 20, 1932.

The Secretary of the Interior.

Sir: It is recommended that the following described lands, excepting any tract, the title to which has passed out of the United States, be withdrawn from public entry, under the first form of withdrawal, as provided in Sec. 3, Act of June 17, 1902 (32 Stat., 388).

North Platte Project, Wyoming-Nebraska

Seminoe Reservoir Site

Sixth Principal Meridian, Wyoming

23 T. 23 N., R. 82 W., All Secs. 1 to 6 incl.,
" T. 24 N., R. 82 W., All Secs. 31 to 36 incl.
24 T. 23 N., R. 83 W., All Secs. 1, 2, 19 and 30,

United States Exhibit 7b

" T. 24 N., R. 83 W., All Secs. 7, 8, 15, 16, 23, 25, 29, 30, 33, 34 and 36.

" T. 25 N., R. 83 W., All Secs. 29, 30 and 32.

25 T. 22 N., R. 84 W., All Secs. 4, 5, and 6.

" T. 23 N., R. 84 W., All Secs. 4, 5, 12, 13, 16, 22, 25, 29, 31, 32, and 35.

" T. 24 N., R. 84 W., All Secs. 1, 5, 19, 20, 21, 25, and 33.

" T. 25 N., R. 84 W., All Secs. 17, 20, 28 and 33.

" T. 26 N., R. 84 W., Sec. 4, E½E½, NW¼NE¼, SW¼SE¼
Sec. 5, W½NW¼, SW¼
Sec. 8, SW¼NE¼, W½ and SE¼
Sec. 9, NE¼ and S½SW¼.

25 T. 26 N., R. 84 W., Sec. 10, E½, NW¼, N½SW¼ and SE¼SW¼
Sec. 15, E½ and E½W½
Sec. 16, all
Sec. 22, all

26 T. 22 N., R. 85 W., All Secs. 1, 2, 3, 8, 9, 10, 11, 16, 17, 18, 19, and 20.

" T. 23 N., R. 85 W., All Sec. 36

" T. 24 N., R. 85 W., All Sec. 14.

27 T. 22 N., R. 86 W., All Secs. 13 and 24.

Respectfully,

ELWOOD MEAD,
Commissioner.

Department of the Interior Jan. 20, 1932.

The lands described are hereby reserved as recommended and the Commissioner of the General Land Office

will cause the records of his office and of the local land office to be noted accordingly.

Jos. M. Dixon,
First Assistant Secretary.

Copy to U.S.G.S.
To Reg. Cheyenne, promulgating order
To O for notation, then "D." *A.R.F.*
1/29/32 Jan. 30, 1632 Noted in "O" G.W.K.

*Matter in italics appears in ink on the original.

* * * * *

Address All Communications to
The Commissioner

United States
Department of the Interior
Bureau of Reclamation
Washington

Office of the Commissioner Oct. 5, 1933.

The Secretary of the Interior.

Sir: It is recommended that the following described lands, excepting any tract the title to which has passed out of the United States, be withdrawn from Public entry, under the first form of withdrawal, as provided in Section 3, Act of June 17, 1902, (32 Stat., 388):

Casper-Alcova Project,
Sixth Principal Meridian, Wyoming.

T. 34 N., R. 78 W., All Sections 3, 4, 5, 6, 7, 8, 9.

T. 35 N., R. 78 W., All Sections 31 and 32.

T. 34 N., R. 79 W., All Sections 1 to 24 inclusive, Sections 28, 29, 30 and 31.

T. 35 N., R. 79 W., All Sections 4, 5, 7, 8, 9, 10, 15 to 21 inclusive, 28 to 33 inclusive.

T. 33 N., R. 80 W., All Sections 1 to 22 inclusive.

T. 34 N., R. 80 W., All Township.

T. 35 N., R. 80 W., All Sections 6, 7, 8, 9, 14 to 36 inclusive.

United States Exhibit 7b

T. 31 N., R. 81 W., All Sections 4 to 10 inclusive, 16 to 21 inclusive, 28 and 29.

T. 32 N., R. 81 W., All Sections 2 to 10 inclusive, 18 to 22 inclusive, 27 to 32 inclusive.

T. 33 N., R. 81 W., All township.

T. 34 N., R. 81 W., All Sections 1 to 17 inclusive, Sections 21 to 28 inclusive, Sections 33, 34, 35 and 36.

T. 35 N., R. 81 W., All Township.

T. 36 N., R. 81 W., All Sections 14 to 30 inclusive, 33 to 36 inclusive.

T. 30 N., R. 82 W., All Sections 1 to 22 inclusive.

T. 31 N., R. 82 W., All Sections 1, 2, 3, 10 to 15 inclusive, 21 to 29 inclusive, 32 to 36 inclusive.

T. 32 N., R. 82 W., Sections 1, 2, 10 to 15 inclusive, 22 to 27 inclusive, 34, 35 and 36.

T. 33 N., R. 82 W., Sections 1, 2, 10 to 14 inclusive, 23, 24, 25, 36.

T. 34 N., R. 82 W., All Sections 1, 2, 12.

T. 35 N., R. 82 W., All Sections 25, 26, 27, 34, 35, 36.

T. 29 N., R. 83 W., All Sections 2, 3, 4, 5, 8, 9, 10, 15, 16, 17, 18, 19, 20, 21, 28, 29, 30.

T. 30 N., R. 83 W., All Sections 13, 14, 23, 24, 25, 26, 27, 33, 34, 35 and 36.

Respectfully,

ELWOOD MEAD.
Commissioner.

Approved 10/6/1933
(Sgd) T. A. Walters.
10-16-33—Noted in 'O'—GWK.
To Reg. Cheyenne, promulgating order.
To 'O' for notation, then 'P.' A.R.F.

United States Exhibit 7b

Withdrawal

Casper-Alcova Project,

Sixth Principal Meridian, Wyoming.

Department of the Interior, October 6, 1933

The lands described are hereby reserved as recommended and the Commissioner of the General Land Office will cause the records of his office and of the local land office to be noted accordingly.

(Sgd) T. A. WALTERS,
First Assistant Secretary.

Copy to U.S.G.S.
G.L.O.

*Matter in italics appears in ink on the original.

Address All Communications to
The Commissioner

United States
Department of the Interior
Bureau of Reclamation
Washington

Office of the Commissioner — Oct. 11, 1933
The Secretary of the Interior

Sir: It is recommended that the following described lands (excepting any tract the title to which has passed out of the United States) be withdrawn from public entry, under the first form of withdrawal, as provided in Section 3, Act of June 17, 1902 (32 Stat. 388).

Casper-Alcova Project, Wyoming
Sixth Principal Meridian

T. 35 N., R. 78 W., All Secs. 2, 10, 11, 15, 16, 17, 18, 19, 20,

81 T. 35 N., R. 78 W., All Secs. 28, 29, 30, 33, 34, 35,

United States Exhibit 7b

82 T. 33 N., R. 79 W., All Secs. 6, 7, 18,
" T. 34 N., R. 79 W., All Secs. 25, 26, 27, 32, 33, 34,
" T. 35 N., R. 79 W., All Secs. 3, 6, 22, 27, 34, 35, 36,
83 T. 33 N., R. 80 W., All Secs. 23 and 24,
" T. 35 N., R. 80 W., All Secs. 4, 5, 10, 13
" T. 36 N., R. 80 W., All Secs. 30, 31,
22 T. 30 N., R. 81 W., Sec. 6, all,
" R. 31 N., R. 81 W., All Secs. 3, 15, 22, 27, 30, 31,
84 T. 32 N., R. 81 W., All Secs. 33 and 34,
" T. 34 N., R. 81 W., All Secs. 18,
" T. 36 N., R. 81 W., All Secs. 7, 8, 9, 10, 11, 13 and 32,
23 T. 29 N., R. 82 W., Sec. 6, all,
" T. 30 N., R. 82 W., All Secs. 23, 29, 30, 31, 32,
" T. 31 N., R. 82 W., All Secs. 4, 9, 16, 20,
85 T. 32 N., R. 82 W., All Secs. 3, 16, 21, 28, 33,
" T. 33 N., R. 82 W., All Secs. 3, 15, 22, and 26,
" T. 34 N., R. 82 W., All Secs. 3 and 11,
" T. 35 N., R. 82 W., All Secs. 22, 23 and 24,
" T. 36 N., R. 82 W., All Secs. 13, 24 and 25
24 T. 24 N., R. 83 W., Sec. 32, all,
" T. 29 N., R. 83 W., Sec. 1, all,
Sec. 11, all,
Sec. 12, all,
24 T. 30 N., R. 83., Sec. 1, all,
Sec. 10, all,
Sec. 11, all,
Sec. 12, all,
Sec. 15, all,
Sec. 22, all,
Sec. 28, all,

United States Exhibit 7b

25 T. 23 N., R. 84 W., Sec. 9, all :
" T. 25 N., R. 84 W., All Secs. 3, 6, 7, 18, 19,
" T. 26 N., R. 84 W., All Secs. 1, 2, 3, 11, 12, 14, 23, 26, 28, 29, 30 31, 32, and 35,
" T. 27 N., R. 84 W., Sec. 17, all
Sec. 19, lots 2, 3, 4,
Sec. 20, N½NW¼, SE¼NW¼, & E½,
Sec. 21, all,
Sec. 22, all,
Sec. 27, all;
Sec. 28, E½, N½NW¼, SE¼NW¼,
Sec. 29, SW¼SW¼,
Sec. 33, E½NE¼, SW¼NE¼, SE¼
Sec. 34, all,
Sec. 35, all,
" T. 29 N., R. 84 W., Sec. 24, NE¼NW¼, NE¼, N½SE¼, SE¼SE¼,
Sec. 25, NE¼ and S½.

Respectfully,

ELWOOD MEAD,
Commissioner.

Department of the Interior Oct. 13, 1933

The lands described are hereby reserved as recommended and the Commissioner of the General Land Office will cause the records of his office and of the local land office to be noted accordingly.

T. A. WALTERS,
First Assistant Secretary.

Copy—U.S.G.S.
G.L.O.
10-26-33—Noted in 'O'—GWK.
10/21/33 Promulgated PMR Div F.

10-25-33—O

*Matter in italics appears in ink on the original.

United States Exhibit 7b

Address All Communications to
The Commissioner

United States
Department of the Interior
Bureau of Reclamation
Washington

Office of the Commissioner Aug. 7, 1934

appr 8/9/34 withdrawal

*Matter in italics appears in handwriting on original.

The Secretary of the Interior.

Sir: It is recommended that the following described lands, excepting any tract, the title to which has passed out of the United States, be withdrawn from public entry, under the first form of withdrawal, as provided in Sec. 3, Act of June 17, 1902 (32 Stat., 388).

Casper-Alcova project, Wyoming
Sixth Principal Meridian

T. 31 N., R. 81 W., Sec. 33, E½NE¼ and NE¼SE¼

Respectfully,

ELWOOD MEAD,
Commissioner.

Department of the Interior Aug. 9, 1934.

The lands described are hereby reserved as recommended and the Commissioner of the General Land Office will cause the records of his office and of the local land office to be noted accordingly.

T. A. WALTERS,
First Assistant Secretary.

Copy U.S.G.S.
" G.L.O.

Aug. 14, 1934

To Reg. Cheyenne, promulgating order
To "O" for notation
then "D" " " A.R.F.
8-20-34—Noted in 'O' GWK *8-14-34—'O'*

United States Exhibit 7b

Address All Communications to
The Commissioner

United States
Department of the Interior
Bureau of Reclamation
Washington

Office of the Commissioner Sept. 1, 1934

The Secretary of the Interior,

Sir: It is recommended that the following described lands, excepting any tract, the title to which has passed out of the United States, be withdrawn from public entry, under the first form of withdrawal, as provided in Section 3, Act of June 17, 1902 (32 Stat., 388).

Casper-Alcova Project, Wyoming
Sixth Principal Meridian

T. 35 N., R. 79 W., Sec. 23, E½NE¼,

T. 30 N., R. 81 W., Sec. 5, NE¼NE¼, W½NE¼, SW¼, W½SE¼, NW¼
Sec. 7, E½NE¼
Sec. 8, N½NW¼, and SW¼NW¼,

T. 31 N., R. 81 W., Sec. 32, W½NE¼, NW¼, E½SW¼, SW¼SW¼, SE¼,

T. 35 N., R. 82 W., Sec. 14, NW¼SW¼, and N½SE¼,
Sec. 15, SE¼NE¼.

Respectfully,

Elwood Mead,
Commissioner.

Department of the Interior Sept. 6, 1934.

The lands described are hereby reserved as recommended and the Commissioner of the General Land Office will cause

the records of his office and of the local land office to be noted accordingly.

OSCAR L. CHAPMAN,
Assistant Secretary.

Copy U.S.G.S.
" G.L.O.
To Reg. Cheyenne, promulgating order.
To 'O' for notation, then 'D.' A.R.F.
9-14-34—Noted in 'O' GWK
*Matter in italics appears in ink on the original.

• • • • • •

Address All Communications to
The Commissioner

United States
Department of the Interior
Bureau of Reclamation
Washington

Office of the Commissioner May 21, 1935

The Secretary of the Interior,

Sir: It is recommended that the following described lands (excepting any tract the title to which has passed out of the United States) be withdrawn from public entry, under the first form of withdrawal, as provided in Section 3, Act of June 17, 1902 (32 Stat. 388).

Casper Alcova Project, Wyoming
Sixth Principal Meridian

T. 27 N., R. 83 W., Sec. 20, E½NE¼ and SE¼,
Sec. 21, NW¼SW¼,
Sec. 29, NW¼NE¼,

T. 29 N., R. 83 W., Sec. 13, N½NE¼ and SE¼NE¼.

Respectfully,

ELWOOD MEAD,
Commissioner.

Department of the Interior May 27, 1935.

The lands described are hereby reserved as recommended and the Commissioner of the General Land Office will

cause the records of his office and the local land office to be noted accordingly. This withdrawal is made subject to Executive Order of November 26, 1934.

T. A. WALTERS,
First Assistant Secretary.

cc—U.S.G.S.
G.L.O.
To Reg. Cheyenne, promulgating order,
To 'O' for notation, then Div. 'D' *A.R.F.*
6-5-35—Noted in 'O' GWK

*Matter in italics appears in ink on the original.

Address All Communications to
The Commissioner

United States
Department of the Interior.
Bureau of Reclamation
Washington

Office of the Commissioner Oct. 29, 1936

The Secretary of the Interior,

Sir: In accordance with the authority vested in you by the Act of June 26, 1936 (Public 827) it is recommended that the said lands (excepting any tract the title to which has passed out of the United States) be withdrawn from public entry under the first form withdrawal, as provided in Section 3, Act of June 17, 1902 (32 Stat., 388).

Casper Alcova Project, Wyoming
Sixth Principal Meridian,

T. 25 N., R. 84 W., Sec. 29, N½ and N½S½;
Sec. 30, N½, SW¼ and NW¼SE¼

T. 25 N., R. 85 W., Sec. 1, all;
Sec. 2, all;
Sec. 3, all;
Sec. 10, N½, N½SW¼, SE¼SW¼ and SE¼;
Sec. 11, all;
Sec. 12, all;
Sec. 13, all;
Sec. 14, all;

United States Exhibit 7b

T. 26 N., R. 85 W., Sec. 35, all.

Respectfully,

JOHN C. PAGE,
Acting Commissioner.

Department of the Interior Nov. 2, 1936.

The foregoing recommendation is hereby approved and the Commissioner of the General Land Office will cause the records of his office and the local land office to be noted accordingly.

W. C. MENDENHALL,
Acting Secretary of the Interior.

Cc: U.S.G.S.
G.L.O.
Posted 11/12/36—M.F.J.'O'
To Reg. Cheyenne, promulgating order.
To 'O' for notation, then 'D.' A.R.F.

*Matter in italics appears in ink on the original.

United States Exhibit 7b

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EXISTING
ACT OF JUNE 17
RECLAN

Casper
Casper C.
Poison Spider Cr.
C. & N. W.
CHICAGO AND NORTHWESTERN
CHICAGO BURLINGTON NORTH
Douglas
C. & N.
PLATTE
Alcova
Alcova Res.
Dam
Sweetwater R.
PATHFINDER RESERVOIR
Dam
SEMINOE
Medicine Bow River
RESERVOIR
North Platte R.
U. P.
LARAMIE
Wheatland Reservoir
UNION PACIFIC
Laramie
L. N. P. & W.
Laramie River
North
SOUTHERN
RIVER
Chugwater
Colorado Creek
Horse
Rawhide Creek
QUINCY
GUERNSEY RESERVOIR
Dam
Guernsey
STATE LINE
WYOMING
NEBRASKA
Torrington
Alliance
Mitchell
Lake Alice
Winters Creek
Lake Minatare
Gering
Bridgeport
Pumpkin Creek
NORTH
Platte R.

T. 36 N.
T. 35 N.
T. 34 N.
T. 33 N.
T. 32 N.
T. 31 N.
T. 30 N.
T. 29 N.
T. 28 N.
T. 27 N.
T. 26 N.
T. 25 N.
T. 24 N.
T. 23 N.
T. 22 N.
T. 21 N.
T. 20 N.
T. 19 N.
T. 18 N.
T. 17 N.
T. 16 N.
T. 15 N.

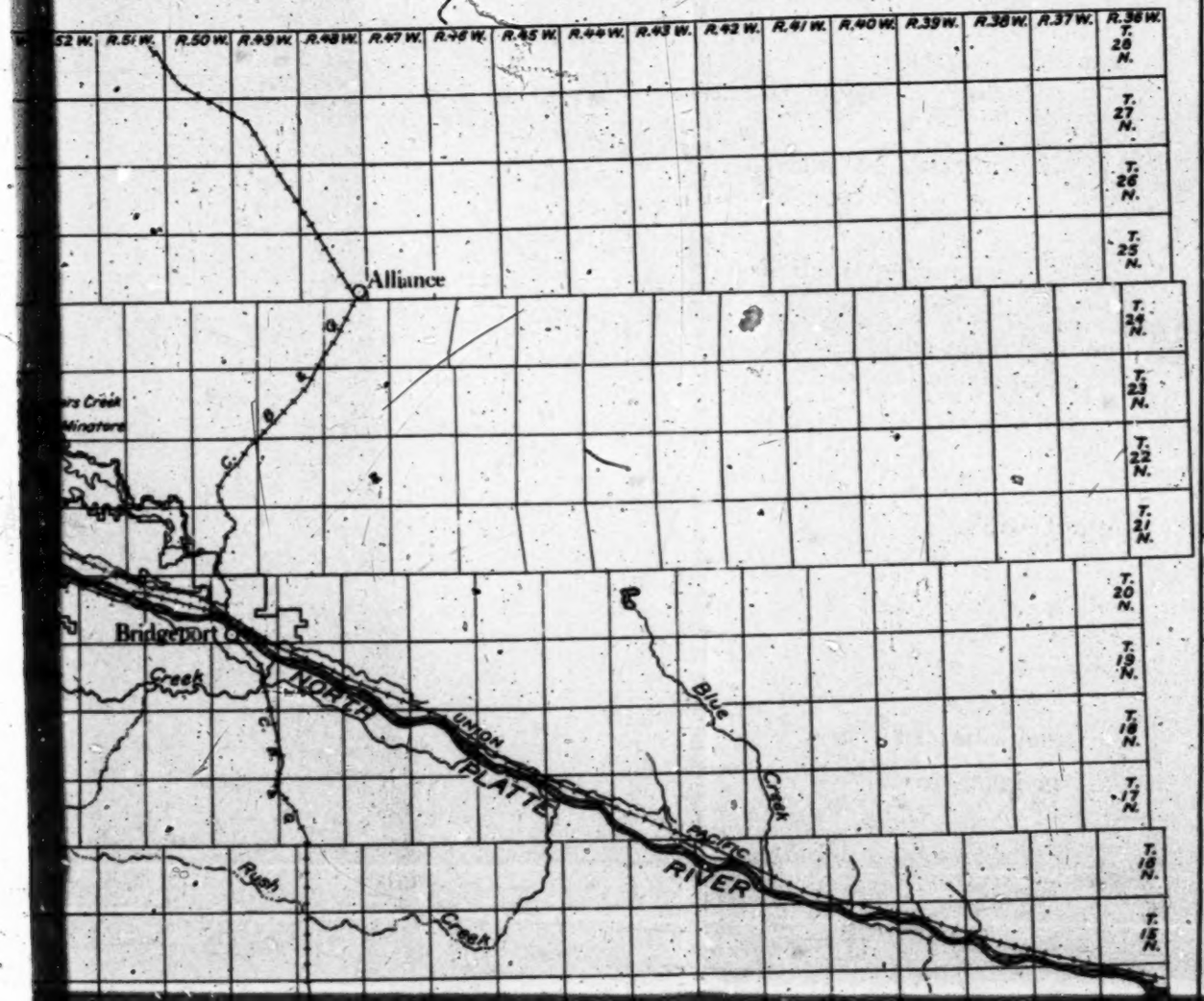
R. 87 W. R. 86 W. R. 85 W. R. 84 W. R. 83 W. R. 82 W. R. 81 W. R. 80 W. R. 79 W. R. 78 W. R. 77 W. R. 76 W. R. 75 W. R. 74 W. R. 73 W. R. 72 W. R. 71 W. R. 70 W. R. 69 W. R. 68 W. R. 67 W. R. 66 W. R. 65 W. R. 64 W. R. 63 W. R. 62 W. R. 61 W.
R. 57 W. R. 56 W. R. 55 W. R. 54 W. R. 53 W. R. 52 W. R. 51 W. R. 50 W. R. 49 W. R. 48 W. R. 47 W.

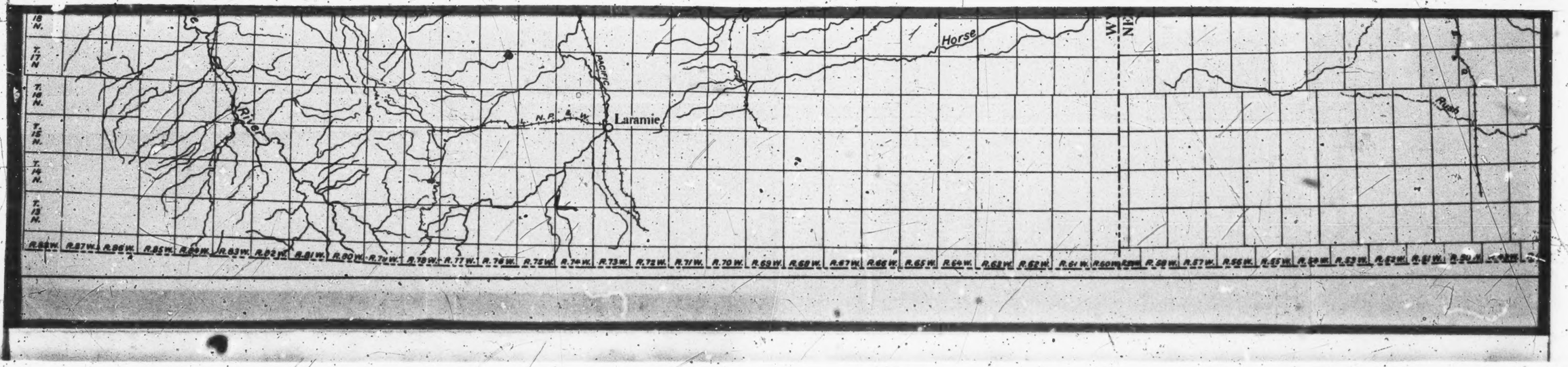
UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

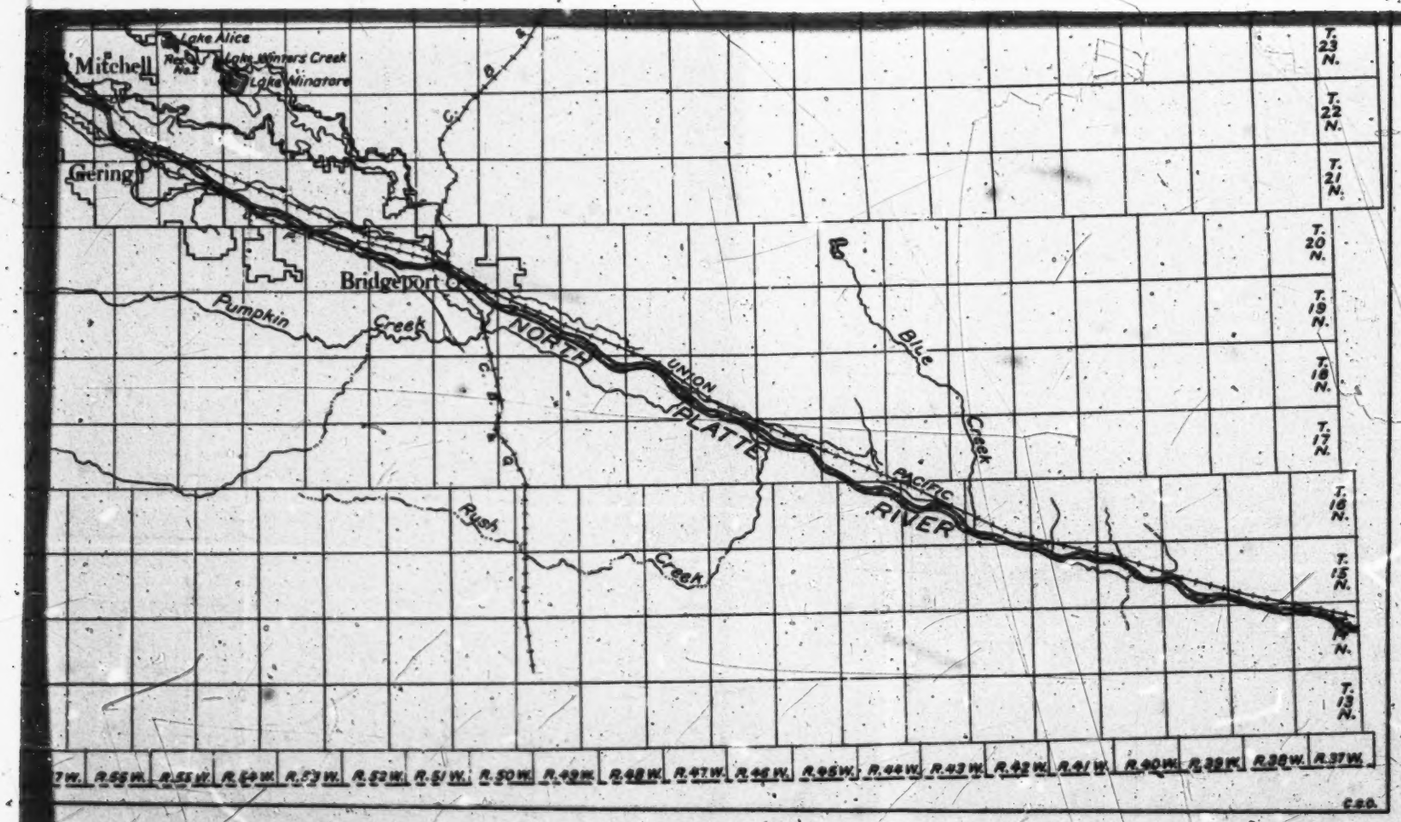
EXISTING WITHDRAWALS UNDER SECTION 3 OF THE ACT OF JUNE 17, 1902 (32 STAT. 388) IN NORTH PLATTE VALLEY. AS OF DECEMBER 31, 1939

RECLAMATION WITHDRAWALS SHOWN THUS [ ]

ACCESSION NO. 39-106




Laramie
N.P. & W.
PACIFIC
Horse
Rush
T. 18 N.
T. 17 N.
T. 16 N.
T. 15 N.
T. 14 N.
T. 13 N.


Lake Alice
Lake Winters Creek
Lake Minatare
Mitchell
Gering
Bridgeport
Pumpkin Creek
NORTH PLATTE
UNION PACIFIC
RIVER
Blue Creek
Rush Creek
T. 23 N.
T. 22 N.
T. 21 N.
T. 20 N.
T. 19 N.
T. 18 N.
T. 17 N.
T. 16 N.
T. 15 N.
T. 14 N.
T. 13 N.
R. 57 W.
R. 56 W.
R. 55 W.
R. 54 W.
R. 53 W.
R. 52 W.
R. 51 W.
R. 50 W.
R. 49 W.
R. 48 W.
R. 47 W.
R. 46 W.
R. 45 W.
R. 44 W.
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R. 42 W.
R. 41 W.
R. 40 W.
R. 39 W.
R. 38 W.
R. 37 W.

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PAGES

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UNITED STATES EXHIBIT 10.

Reservoir Applications,

Cert. Record R1 P. 53 Ac. H 1,070,000 Cert. Record 50 P. 1-791 Ac. 59932.8 Cert. Record 51 P. 1-767 Ac. 54,166

Application for a Permit to Construct the Pathfinder Reservoir, and to Store the Unappropriated Water of the State of Wyoming.

Water Division No. 1. District No. 10

I, John E. Field of Denver, County of Denver, State of Colorado being duly sworn, according to law, upon my oath say:

1. The name of the applicant The Secretary of the Interior, U. S. A.

2. The postoffice address of the applicant Washington, D. C.

3. The name of stream from which reservoir is to be filled and appropriation made is North Platte River.

4. The use to which the water is to be applied is Irrigation, Power, Manufacturing Domestic, and other beneficial purposes.

5. The location of the proposed reservoir will be in Tps. 26-27-28-29 & 30 R. 84 W & Tps. 28-29 & 30 N. R. 85 W. 29 & 30 N., R. 86 W., described as follows:

(a) State whether situated in channel of running stream, and give character of material at outlet.

The reservoir is in the bed of the North Platte River and several of its tributaries. Material at outlet is granite in place.

Dam is located in Sec. 19 T. 20 N. R. 83 W. whence the W¼ cor bears north 300 feet.

(b) If not in channel of running stream state how it is to be filled. If through canal give name and dimensions:

(c) The construction of dam, the material of which it is to be built and the method of protecting from waves are as follows:

The dam is to be of masonry imbedded in Portland cement mortar.

6. The area of reservoir is 23000 acres with maximum depth of 210 feet and approximate mean depth of water of 60 feet.

7. The dimensions of dam are: Length on top 250 feet. Length on bottom 60 feet. Width on top 16 feet. Width on bottom 144 feet. Depth 210 feet. Slope of front 1 in 20. Slope of back 2′ in 3′. Height of dam above water line when full 10 feet.

8. The outlet and wasteway, with dimensions of each, are as follows:

Length of wasteway 600 feet on north side of dam over solid granite.

9. The outlet of the proposed reservoir is located on the north side of the dam being a tunnel 500 feet long and 10′ x 13′ feet in the clear.

NW4SW4 of Section 19, Township 29 North, Range 83 West.

10. The estimated cost of said reservoir is $1,000,000.

11. Construction will begin on proposed works on or before May 1, 1905.

12. The time required for the completion of the works is Five years from May 1, 1905.

Signed: JOHN E. FIELD

Note.—The statements in the foregoing application, together with the maps and plans, must comply with the requirements of Chapter 69, Session Laws 1903.

State of Wyoming.

The State of Wyoming, County of Laramie, ss.

I hereby certify that the foregoing application was

signed in my presence and sworn to before me by John E. Field this 1st day of February, 1905. William H. Kelly, Clerk, Supreme Court. (Seal).

(Illegible) mailed Oct. 16 1909. Time for completion extended to December 31st, 1910. (Illegible signature) State Engineer, November 5, 1909.

Notice of Expiration Mailed Sept. 21, 1910. Time for completion extended to December 31st, 1911. (Illegible signature) State Engineer Nov. 30—1910.

Notice of completion received Dec. 15, 1911.

The State of Wyoming, State Engineer's Office, ss.

This is to certify that I have examined the foregoing application and have returned the same without my approval for the following reasons:.....

Witness my hand this.....day of .....A.D. 190.....

.....

State Engineer.

The State of Wyoming, State Engineer's Office, ss.

This is to certify that I have examined the foregoing application and do hereby grant the same subject to the following limitations and conditions: For the reclamation of lands lying under the government canals as per applications.

Construction of proposed works shall begin within one year from date of approval.

The time for completing the work shall terminate on December 31, 1909.

Witness my hand this 3rd day of February, A. D. 1905.

CLARENCE T. JOHNSTON, *State Engineer.*

The State of Wyoming, State Engineer's Office, ss.

This instrument was received and filed for record on the 6 day of December, A. D. 1904, at 2 o'clock P. M., and duly recorded in Book 3 of Reservoirs on Page 80.

CLARENCE T. JOHNSTON, *State Engineer.*

Certification

United States of America, State of Wyoming, ss.

I, Fulton D. Bellamy, of Cheyenne, Wyoming, the duly appointed, qualified and acting Deputy State Engineer in and for the State of Wyoming, do hereby certify that the above and foregoing is a full, true and complete copy of Permit No. 609 Res., so full and complete as the original thereof appears on file and of record in my office.

In Witness Whereof I have hereunto set my hand in the City of Cheyenne, in the State of Wyoming, on this 5th day of April, 1938.

FULTON D. BELLAMY,
Deputy State Engineer.

United States Exhibit 10

UNITED STATES EXHIBIT 11.

1938 Enl.

Water Division No. 1 District No.

Application for a Permit to Divert and Appropriate the Water of the State of Wyoming.

Enlargement of The Whalen Falls Canal.

I, John E. Field, of Denver, County of Denver, State of Colorado, being duly sworn according to law, upon my oath say:

1. The location and description of the ditch to be enlarged is as follows—

2. The headgate is situated on the north bank of the North Platte River S. 450° 35′ W from ¼ cor. E. line of Section 3, Township 26 N, Range 65 W.

3. Said ditch is 42 miles long and passes through the following lands (give legal subdivisions) the same being correctly shown on the map accompanying this application:

See map permit 3409

4. The dimensions of said ditch are: Width on top (at water-line) 31 feet; width on bottom 25 feet; depth of water 3 feet; grade 2.112 feet per mile.

5. Said ditch now serves to irrigate the following described land:

20,000 acres described in permit 3409 which has not yet expired.

6. The total area now irrigated from said ditch being about 2,000 acres.

7. Application is hereby made for permission to enlarge or extend the use of water through the above named and described ditch and to divert and appropriate the water of the State as follows:

1. The name of the applicant The secretary of the Interior U. S. A.

2. The postoffice address of the applicant Washington, D. C.

3. The use to which the water is to be applied is Irrigation, power, domestic, manufacturing and other beneficial purposes.

4. The name of the ditch or canal is Interstate Canal.

5. The source of the proposed appropriation is The North Platte River and Pathfinder Reservoir. and the head of the proposed extension is located NW4 NW4 of Section 17, Township 25 N., Range 62 W.

6. The said ditch or canal as enlarged is to be 200 miles long and to pass through the following lands (give sections, townships and ranges): See map.

7. The dimensions of said ditch are to be: (a) (At headgate) Width on top (at water-line) 94 feet; width on bottom 64 feet; depth of water 13 feet; grade 9/10 feet per mile.

(b) Give dimensions at each point where reduced in size, stating miles from headgate: (At 51 miles) width on top (at water-line) 74 ft.; width on bottom 44 ft.; depth of water 13 ft.; grade 9/10 ft. per mile.
(At 71 miles) width on top (at water-line) 65 ft.; width on bottom 35 ft.; depth of wate 13 ft.; grade 9/10 ft. per mile.

8. Describe the character of proposed works, stating: 1st. The nature of material to be moved. 2nd. Number and length of tunnels, if any. 3rd. Amount of fluming, if any. 10 ft. concrete diversion dam estimated cost $100,000.00. No tunnels, 1000 ft. concrete fluming, concrete syphons and waste-ways. Material largely earth, some loose and solid rock.

9. The estimated cost of said enlargement is $4,000,000 00/100 Dollars.

10. The land to be irrigated has a total area of 230,000 See Amended Land Description acres, described as fol-

lows: (Give estimated acreage in fractions of subdivisions)

All lands on accompanying maps which can be reached. It is estimated that 150,000 acres of irrigable land lies above all existing canals or extensions of the same. That by furnishing lands having an insufficient supply, with stored water, 30,000 additional acres will be served, and lands under proposed canals 50,000 additional acres will be served.

See list of lands attached to map.

For Amended Land Description see tabulation in back of book. Original of this tabulation filed in "Land Descriptions," Permit No. 1398 Enl. (File 43-3.)

*If the proposed work is to be an extension of the original ditch, state the location of the head of the extension by courses and distances from the nearest Government corner.

11. Construction of the proposed enlargement or extension will begin within one year from date of approval of this application.

12. The time required for the completion of enlargement or extension is five years from December 31st, 1905.

13. The time required to complete the application of water to the beneficial use stated in this application is ten years from December 31st, 1905.

14. A map in duplicate, prepared in accordance with the provisions of Section 35 of the Water Laws, accompanies this application.

Signed: JOHN E. FIELD.

Note.—The statements in the foregoing application must comply with the requirements of Chapter 14, R. S. 1899.

Note.—Before applications for the enlargement of ditches can be approved, the written consent of the owners of such ditches must be secured, and this must accompany the application.

United States Exhibit 11

The State of Colorado, County of Denver, ss.

I hereby certify that the foregoing application was signed in my presence and sworn to before me by John E. Field this 26th day of November, 1924. George E. Moore, Notary Public. My commission expires June 18th 1908. (Seal).

The State of Wyoming, State Engineer's Office, ss.

This is to certify that I have examined the foregoing application and have returned the same without my approval for the following reasons:

Witness my hand this ..... day of ....., A. D. 190....

State Engineer.

The State of Wyoming, State Engineer's Office, ss.

This is to certify that I have examined the foregoing application and do hereby grant the same subject to the following limitations and conditions:

Work will begin within one year from date of approval.

The time for completing construction shall terminate on December 31, 1910.

The time for completing the appropriation of water for beneficial use shall terminate on December 31, 1915.

The amount of the appropriation shall be limited to one cubic foot per second of time for each seventy acres of land reclaimed on or before December 31, 1915, and the additional volume applied to power, domestic, manufacturing, and other beneficial purposes on or before said date.

Witness my hand this 26th day of July, A. D. 1905.

CLARENCE T. JOHNSTON, *State Engineer*

The State of Wyoming, State Engineer's Office, ss.

This instrument was received and filed for record on the 6" day of Dec., A. D. 1904, at 2:00 o'clock P. M., and duly recorded in Book 6 of Enlargements on Page 109

CLARENCE T. JOHNSTON, *State Engineer*

United States Exhibit 11

(The following notations have been added to the original record by the Office of the State Engineer.)

1. See "Agreement" Book 3 Misc. Rec. p. 190

2. Notice of completion received Dec. 4 1912 for lands in Wyoming

3. Completed for lands in Wyoming.

4. Time for completing the appropriation of water for beneficial use extended to Dec. 31 1918

Jas. B. True State Engineer, Dec. 31 1915

5. Proof submitted. Nov. 1917

6. Time for completion of beneficial use extended to Dec. 31 1921

Jas. B. True State Engineer Nov. 18 1918

7. For agreement with Pleasant Valley Lateral Ass'n. See Ass. Rec. Bk 1, P. 147 Board of Control.

8. Proof submitted. Nov. 1919

9. Notice of Expiration of Time for Completion to Beneficial Use Mailed. Sep. 30 1921

10. Time for completion of beneficial use extended to Dec. 31 1925

Frank C. Emerson State Engineer Dec. 31 1921

11. Proof submitted. Nov. 1923

12. Notice of Expiration of Time for Completion to Beneficial Use Mailed. Sep. 30, 1925.

13. Time for completion of beneficial use extended to Dec. 31, 1927.

Frank C. Emerson State Engineer Dec. 31 1925

14. Notice of Expiration of Time For Completion to Beneficial Use Mailed. Sep. 30 1927

15. Time for completion of beneficial use extended to Dec. 31 1929

John A. Whiting State Engineer Dec. 16 1927

United States Exhibit 11

16. Notice of Expiration of Time for Completion to Beneficial Use Mailed. Sep. 30 1929

17. Time for completion of beneficial use extended to Dec. 31 1931

John A. Whiting State Engineer Nov. 16 1929

18. Notice of Expiration of Time for Completion to Beneficial Use Mailed. Sep 30 1931

19. Petition for amendment of land description and canal location granted September 20, 1934. Amended maps filed in Book E-4. See Miscellaneous Notices, Permit No. 1398 Enl. (File 43-2). Recorded in Miscellaneous Records Book 8, Pages 200 to 202.

EDWIN W. BURRITT, *State Engineer.*

20. Time for submitting proof extended to Dec 31 1938 John D. Quinn, State Engineer Nov. 9—1936 Signed in Serial Register.

* * * * *

UNITED STATES EXHIBIT 17.

Cert. Record 53 P 1500 Ac 3747 Cert. Record 54 P 1249 Ac 17393 Cert. Record 54 P 25140 Ac. 21427 Cert. Record 25 P 308 Ac 26447 Cert. Record 25 P 308 Ac 277.

Permit No. 18544.

Notice of Completion Received Oct. 11, 1937 from U. S. Dept. of Int. Proof Submitted.

Application for a Permit to Divert and Appropriate the Water of the State of Wyoming.

Water Division No. 1. District No.

I, John E. Field, of Denver, County of Denver, State of Colorado, being duly sworn according to law, upon my oath say:

1. The name of the applicant: The Secretary of the Interior, U.S.A.

2. The postoffice address of the applicant: Washington, D. C.

3. The use to which the water is to be applied: Irrigation, Domestic, Manufacturing and other beneficial purposes.

4. The name of the ditch or canal is Fort Laramie Canal.

5. The source of the proposed appropriation is North Platte River and Pathfinder Reservoir.

6. The headgate of the proposed ditch or canal is located on the south bank of the stream in the NE4 of the NE4 Section 11 or the NE4 of the NW4 of Section 10, T. 26 N., Range 65 West

7. The said ditch or canal is to be one hundred and twenty-eight (128) miles long and to pass through the following lands (give route by courses and distances, or by naming legal subdivisions crossed): (See list of sections attached hereto).

8. The dimensions of said works: (a) (below headgate) Width on top (at water-line) 64 feet; width on bottom 34 feet; depth of water 10 feet; grade 0.9 feet per mile.

(b) Give dimensions at each point where reduced in size, stating miles from headgate:

(At 60 miles) width on top (at water-line) 54 feet; width on bottom 24 feet; depth of water 10 feet; grade 0.9 feet per mile.

(At 86 miles) width on top (at water-line) 48 feet; width on bottom 24 feet; depth of water 8 feet; grade 1.0 feet per mile.

(At 108 miles) width on top (at water-line) 30 feet; width on bottom 14 feet; depth of water 5 feet; grade 2.0 feet per mile.

128 miles End of Canal.

9. Describe the character of proposed works, stating: 1st. The nature of the material to be moved. 2nd. Number and length of tunnels, if any. 3rd. Amount of fluming, if any.....

10. The estimated cost of said ditch is: Two Millions, five hundred Thousand (2,500,000) Dollars.

11. The land to be irrigated has a total area of 149,400 acres, described as follows: (Give estimated acreage in fractions of subdivisions) See list attached hereto.

Twenty per cent of said lands are thought to be non irrigable leaving a net of about 120,000 acres to be served from the canal, some 30,000 acres gross lie under other canals, for such lands a supplemental supply will be furnished when there is a shortage during low water. See general statement attached.

12. Construction will begin on proposed works on or before....., 190.....

13. The time required for the completion of ditches and other distributing works is: three years from December 31st, 1905.

United States Exhibit 17

14. The time required to complete the application of water to the beneficial use stated in this application is: Ten years from December 31st, 1908.

15. A map of the proposed ditch or canal, prepared in accordance with Chapter 14, R. S. 1899, accompanies this application.

Signed:
JOHN E. FIELD.

Note: The statements in the foregoing application must comply with the requirements of Chapter 14, R.S. 1899.

* * * * *

The State of Colorado, County of Denver, ss.

I hereby certify that the foregoing application was signed in my presence and sworn to before me by John E. Field, the 26th day of November, 1904. George E. Moore, Notary Public. (Seal.) My Commission expires June 18th, 1908.

Petition for amendment approved March 21, 1935. See Misc. Records, Page 147 of Book 8, Amended Maps filed E5.

EDWIN W. BURRITT,
State Engineer.

Recorded petition granted Nov. 30, 1935, in Misc. Records Book 8, pages 225-227, for amended land description.

Notice of expiration mailed Sept. 30, 1937.

The State of Wyoming, State Engineer's Office, ss.

This is to certify that I have examined the foregoing application and do hereby grant the same subject to the following limitations and conditions: This permit grants only the right to use surplus water of the stream when all prior rights are satisfied.

Construction of proposed work shall begin within one year from the date of approval.

The time for completing the work shall terminate on December 31, 1937.

United States Exhibit 17

The time for completing the application of water to beneficial use shall terminate on December 31, 1939, and final proof of appropriation shall be made within five years thereafter.

The amount of appropriation shall be limited to one cubic foot per second of time for each seventy acres of land reclaimed on or before December 31, 1939, and the additional volume used for domestic, manufacturing and other beneficial purposes on or before said date.

Witness my hand this 19th day of February, A.D. 1935.

EDWIN W. BURRITT,
State Engineer.

The State of Wyoming, State Engineer's office, ss.

This instrument was received and filed for record on the 6th day of December, A.D. 1904, at 2:00 o'clock P.M.

EDWIN W. BURRITT,
State Engineer.

Recorded in Book 59 of Applications, on Page 288.

UNITED STATES EXHIBIT 18.

Permit No. 3958, Enlargement

Notice of Completion Received Nov. (illegible) 1926
Proof Submitted .....

E

Application for a Permit to Divert and Appropriate the Water of the State of Wyoming

Water Division No. 1 District No. ....

Enlargement of the Fort Laramie Canal (North Platte Project U.S.R.S.)

I, Andrew Weiss Project Manager U.S.R.S., for the Secretary of the Interior of the United States of America, of Mitchell, County of Scotts Bluffs State of N. raska being duly sworn according to law, upon my oath say:

1. The name.... of the applicant The United States of America acting in this behalf by the Secretary of the Interior

2. The postoffice address.... of the applicant Washington, D. C.

3. The use to which water is to be applied is Power Purposes

4. The name of the Enlargement is Lingle Power Plant Enlargement.

5. The source of the proposed appropriation is North Platte River and Pathfinder Reservoir which is a tributary of .....

6. (a) The headgate of the ditch to be enlarged is located N. 15° 22′ E. 5200 feet distant from the SW corner of Section 11, T. 26 N., R. 65 W., and is in the NE¼NW¼ of Section 11, T. 26 N., R. 65 W.

(b) Said ditch is 128 miles long and has a carrying capacity at the headgate of 1440 cubic feet per second.

(c) The total area now irrigated from said ditch is 124904.6 acres, being lands described in Permit No. 15220

7. The proposed diversion and appropriation of water is to be made by means of:

(a) The enlargement of the ditch, without extension? Yes.

(b) The enlargement and extension of the ditch?....

The head of the extension is located ..... feet distant from the ..... corner of Section..... T.....N., R.....W., and is in the.....of Section....., T.....N., R.....W.

8. The said ditch as enlarged will be 128 miles long and will have a carrying capacity at the headgate of 1440 cubic feet per second.

9. (a) The nature of the material to be moved is Earth and Rock

(b) Number, length and size of tunnels Two tunnels, 2700 and 2150 feet long respectively

(c) Number, length and size of flumes Two syphons, 270 and 150 feet long respectively

10. The estimated cost of said enlargement is $400,000.00 Dollars.

11. Construction on proposed work will begin within one year from date of approval of this application.

12. The time required to complete the enlargement is two years from December 31st, 1918

13. The time required to complete the application of water to the beneficial uses stated in this application is two years from December 31st, 1918.

14. The accompanying map is prepared in accordance with the Manual of Regulations and Instructions for Filing Applications in the State Engineer's Office and is hereby declared a part of this application.

15. The land to be irrigated by this enlargement is described in the following tabulation:

(Give irrigable acreage in each 40-acre subdivision. Designate ownership of land, Government, State or Private. If Private, give names of owners.)

Twp.	Range	Sec.	NE¼ NE¼	NE¼ NW¼	NE¼ SW¼	NE¼ SE¼	NW¼ NE¼	NW¼ NW¼	NW¼ SW¼	NW¼ SE¼	SE¼ NE¼	SE¼ NW¼	SE¼ SW¼	SE¼ SE¼	SW¼ NE¼	SW¼ NW¼	SW¼ SW¼	SW¼ SE¼	Totals

The point at which the water is to be returned to the stream (North Platte River) is located S. 66° 30′ E. 3500 feet from the North West Corner of Section 25, T. 25N, R. 63 West of the 6th P. M.

The amount of water to be diverted is 150 cubic feet per second. The effective head available for power is 110 feet. The power to be developed is 1500 horsepower.

Total Acreage Under This Enlargement.....

(Signed) ANDREW WEISS

United States Exhibit 18

The State of Nebraska, County of Scotts Bluff, ss.

I hereby certify that the foregoing application was signed in my presence and sworn to before me by Andrew Weiss, this 17th day of December, 1918. O. K. Barnes, Notary Public. Commission expires Aug. 2, 1924. (Seal).

Consent to Enlarge

United States of America the sole owner.... of the Fort Laramie Canal Ditch, taking water from North Platte River under Permit No. 15220 do hereby give our free and voluntary consent to the enlargement or extension of, and to the use of water through, the said ditch, for the generation of Power by The United States of America according to the terms of his application for enlargement.

Dated ....., 19.....

THE SECRETARY OF THE INTERIOR
FOR THE UNITED STATES OF AMERICA.
By ANDREW WEISS,
Project Manager, U.S.R.S.

Notice of commencement of work received Jan. 15, 1919.

Notice of expiration mailed Sep. 30, 1920.

Notice of expiration of time for completion to beneficial use mailed Sep. 30, 1920.

Time for completion extended to Dec. 31, 1922. Frank C. Emerson, State Engineer, Nov. 3, 1920.

Time for completion of beneficial use extended to Dec. 31, 1922. Frank C. Emerson, State Engineer, Nov. 3, 1920.

Notice of expiration mailed Sep. 30, 1922.

Notice of expiration of time for completion to beneficial use mailed Sep. 30, 1922.

Time for completion extended to Dec. 31, 1926. Frank C. Emerson, State Engineer, Dec. 11, 1922.

Notice of expiration mailed Sep. 30, 1926.

United States Exhibit 18

Notice of expiration of time for completion to beneficial use mailed Sep. 30, 1926.

Notice of completion beneficial use received Nov. 12, 1926.

The State of Wyoming, State Engineer's Office, ss.

This is to Certify that I have examined the foregoing application and have returned the same without my approval for the following reasons:.....

.....

Witness my hand this ..... day of ....., A. D. 19.....

.....

State Engineer.

The State of Wyoming, State Engineer's Office, ss.

This is to Certify that I have examined the foregoing application and do hereby grant the same subject to the following limitations and conditions: For Power Purposes only.

This permit grants only the right to use surplus water of the stream when all prior rights are satisfied.

Work will begin within one year from date of approval.

The time for completing construction shall terminate December 31, 1920.

The time for completing the appropriation of water for beneficial use shall terminate December 31, 1920.

Final Proof of such beneficial use must be submitted prior to Dec. 31, 1922.

The amount of the appropriation shall be limited to the volume applied to —Power— purposes on or before that date.

Witness my hand this 28th day of December, A. D. 1918.

JAS. B. TRUE, *State Engineer.*

The State of Wyoming, State Engineer's Office, ss.

United States Exhibit 18

This instrument was received and filed for record on the 24th day of December, A. D. 1918, at 9 o'clock A. M., and duly recorded in Book 14 of Enlargements, on Page 157.

JAS. B. TRUE, *State Engineer.*

United States Exhibit 18

UNITED STATES EXHIBIT 19.

Permit No. 17062

E.3

Notice of Completion Received Feb. (illegible) 1927. Proof Submitted .....

Application for a Permit to Divert and Appropriate the Water of the State of Wyoming

Water Division No. 1 District No. ....

I, H. W. Bashore of Mitchell County of Scotts Bluff, State of Nebraska, being duly sworn according to law, upon my oath say:

1. The name.... of the applicant is The United States of America by Hubert Work, Secretary of the Interior.

2. The postoffice address.... of the applicant is Washington, D. C.

3. The use to which the water is to be applied is power purposes to supplement Permit No. 3958 Enl for the Lingle Power Plant.

4. The name of the ditch or canal is the Laramie River Diversion Canal.

5. The source of the proposed appropriation is Laramie River which is a tributary of The North Platte River.

6. The headgate of the proposed ditch or canal is located N. 16 degrees 41 minutes W. 1074 feet distant from the S¼ corner of Section 25, T. 26 N., R. 65 W., 6th P. M., and is in the SE¼SW¼ of Section 25, T. 26 N., R. 65 W. 6th P. M.

7. The said ditch or canal is to be 0.64 miles long.

8. The carrying capacity of the ditch or canal at the headgate is 135 cu. ft. per sec.

9. (a) The nature of the material to be moved is Earth and gravel

United States Exhibit 19

(b) Number, length and size of tunnels None

(c) Number, size and length of flumes None

10. The estimated cost of said works is $5,000.00 Dollars.

11. Construction on proposed work will begin within one year from date of approval of this application.

12. The time required for the completion of the ditches and other distributing works is one year.... from December 31st, 1925

13. The time required to complete the application of water to the beneficial uses stated in this application is one year.... from December 31st, 1925

14. The accompanying map is prepared in accordance with the Manual of Regulations and Instructions for Filing Applications in the State Engineer's Office and is hereby declared a part of this application.

15. The proposed use is described in the following tabulation:

(Give irrigable acreage in each 40-acre subdivision. Designate ownership of land, Government, State or Private. If Private, give names of owners.)

Township	Range	Sec.	NE¼ NE¼	NE¼ NW¼	NE¼ SW¼	NE¼ SE¼	NW¼ NE¼	NW¼ NW¼	NW¼ SW¼	NW¼ SE¼	SW¼ NE¼	SW¼ NW¼	SW¼ SW¼	SW¼ SE¼	SE¼ NE¼	SE¼ NW¼	SE¼ SW¼	SE¼ SE¼	Totals

Supplemental supply only. This supply to be supplemental to the right acquired under Permit No. 3958 Enl. and only used when a sufficient amount of water is not available in the North Platte River for diversion through the Fort Laramie Canal, or other temporary condition exists which would not allow a sufficient supply of water from the North Platte River for the proper operation of the Lingle Power Plant as proposed under Permit No. 3958 Enl.

Total Number of Acres to Be Irrigated.....

(Signed) H. W. BASHORE.

United States Exhibit 19

681

The State of Nebraska, County of Scotts Bluff, ss.

I hereby certify that the foregoing application was signed in my presence and sworn to before me by H. W. Bashore this 24th day of November, 1925. A. T. Stienpfig, Notary Public. My commission expires Mar. 7, 1931. (Seal).

Notice of expiration of time for commencement of work mailed Nov. 30, 1926.

Notice of commencement of work received Feb. 8, 1927.

Notice (illegible) received Feb. 8, 1927.

The State of Wyoming, State Engineer's Office, ss.

This is to Certify that I have examined the foregoing application, and have rejected same for following reasons:

.....

.....

.....

Witness my hand this.....day of ....., A. D. 19.....

.....

State Engineer.

The State of Wyoming, State Engineer's Office, ss.

This is to Certify that I have examined the foregoing application and do hereby grant the same subject to the following limitations and conditions: The permit granted by the approval of this application is specifically confined and limited to the use of such water as may come to the point of diversion established hereunder after all valid uses of water from the Laramie River and tributaries either heretofore established or hereafter to be established, are satisfied according to their legal requirements.

This permit grants only the right to use surplus water of the stream when all prior rights are satisfied.

Construction of proposed work shall begin within one year from the date of approval.

The time for completing the work shall terminate on December 31, 1927.

The time for completing the application of water to beneficial use shall terminate on December 31, 1927, and final proof of appropriation shall be made within five years thereafter.

The amount of the appropriation shall be limited to the volume beneficially used for power purposes on or before December 31, 1927, not to exceed 135 cubic feet of water per second of time.

Witness my hand this 27th day of March, A. D. 1926.

FRANK C. EMERSON, *State Engineer.*

The State of Wyoming, State Engineer's Office, ss.

This instrument was received and filed for record on the 9th day of December, A. D. 1925, at 2:30 o'clock P. M., and duly recorded in Book 55 of Applications, on page 58.

FRANK C. EMERSON, *State Engineer.*

UNITED STATES EXHIBIT 23.

Cert. Record 51 P. 759-767, 541-593 Cert. Record RI P 54 Ac Ft 71,140.

Permit No. 3905 Reservoir.

F

Notice of Completion Received Dec. 2, 1927. Proof Submitted.....

Application for a Permit to Construct the Guernsey Reservoir and to Store the Unappropriated Water of the State of Wyoming..

Water Division 1 District No.....

I, Andrew Weiss, of Mitchell, County of Scotts Bluff, State of Nebraska, being duly sworn according to law, upon my oath say:

1. The name of the applicant: The Secretary of the Interior, United States of America.

2. The postoffice address of the applicant: Washington, D.C.

3. The name of the stream from which the reservoir is to be filled and appropriation made is North Platte River, which is a tributary of.....

4. The use to which the water is to be applied is: Supplementing supply from Pathfinder Reservoir Application No. 609 for irrigation of lands under Ft. Laramie Canal Application No. 15220 and lands under Interstate Canal (Whalen Falls Canal Application No. 3409) Application No. 1398 Enl. also for power, manufacturing, domestic, flood control and other beneficial purposes.

5. (Copy illegible).....ed feet (500) feet distant from the (copy illegible)..... the Northwest Quarter of Section 27, T. 27 N., R. 66W.

The formation at the outlet consists of Sandstone.

6. Fill out either (a) or (b).

(a) The reservoir is located in the channel of North Platte River.

(b) The reservoir is to be filled through the.....Canal, which has a carrying capacity of.....cubic feet per second.

7. The area of the high-water line of the reservoir is Approx. 2,336 acres.

The available capacity of the reservoir is: 72,700 acre-feet.

8. The dam is to be constructed as follows: Earth and rock fill with loose rock rip-rap on waterface. Dimensions: Height—100 ft.; width—top 26 ft:, bottom 480 ft; length—600 ft; slope water face, 3:1, downstream 1½:1, with heavy rock apron on downstream toe. Contents—400,000 cubic yards.

The water face of the dam is to be protected from wave action in the following manner: Loose rock rip-rap placed on a layer of gravel.

9. The estimated cost of said reservoir is 2,000,000.00 Dollars.

10. Construction on proposed work will begin within one year from the date of approval of this application.

11. The time required for the completion of the works is 4 years from December 31st, 1922.

12. The accompanying map is prepared in accordance with the Manual of Regulations and Instructions for Filing Applications in the State Engineer's Office and is hereby declared a part of this application.

(Signed) ANDREW WEISS.

The State of Nebraska, County of Scotts Bluff, ss.

I hereby certify that the foregoing application was signed in my presence and sworn to before me by Andrew

Weiss this 2nd day of April, 1923. Harry Hillje, Notary Public. (Seal.) My commission expires March 29, 1926.

Actual storage capacity much less according to capacity table in use at dam.
outlet at 27' contour all under head water
H.H.

*Matter in italics appears in handwriting on margin of original.

The State of Wyoming, State Engineer's Office, ss.

This is to certify that I have examined the foregoing application and have rejected the same for the following reason: .....

Witness my hand this.....day of....., A.D. 19.....

.....
State Engineer.

The State of Wyoming, State Engineer's office, ss.

This is to certify that I have examined the foregoing application and do hereby grant the same subject to the following limitations and conditions: This permit is granted for the following uses or purposes only: Supplementing supply from Pathfinder Reservoir, Permit No. 609 Res. for irrigation of lands under Ft. Laramie Canal, Permit No. 15220, under Interstate Canal (Whalen Falls Canal Permit No. 3409) Permit No. 1398 Enl.; also for power, manufacturing, domestic and flood control purposes.

This permit grants only the right to use surplus water of the stream when all prior rights are satisfied.

Construction of proposed work shall begin within one year from date of approval.

The time for completing the work shall terminate on December 31, 1926.

Final proof of such beneficial use must be submitted prior to Dec. 31, 1931.

Witness my hand this 8th day of May, A.D. 1923.

C. D. SHAWVER,
State Engineer.

United States Exhibit 23

Notice of expiration of time for commencement of work mailed Jan. 31, 1924.

Notice of commencement of work received Apr. 18, 1924.

Notice of expiration mailed Sept. 30, 1926.

Time for completion extended to Dec. 31, 1927.

Notice of expiration mailed Sept. 30, 1927.

FRANK C. EMERSON,
State Engineer,
Nov. 12, 1926.

The State of Wyoming, State Engineer's Office, ss.

This instrument was received and filed for record on the 20th day of April, A.D. 1923, at 9 o'clock A.M., and duly recorded in Book 13 of Reservoirs, on Page 104.

C. D. SHAWVER,
State Engineer.

UNITED STATES EXHIBIT 24.

Cert. Record 50 P1-791 Ac 59.932.8 Cert. Record 51 P 1-767 Ac 54166.

Permit No. 4968, Enlargement.

E4

Notice of Completion Received Sept. 20, 1935. Proof Submitted.....

Application for a Permit to Divert and Appropriate the Water of the State of Wyoming.

Secondary Application

Water Division No. 1 District No. 14

Enlargement of the Interstate Canal (Whalen Falls Canal)

I, T. W. Parry, of Mitchell, County of Scottsbluff, State of Nebraska, being duly sworn according to law, upon my oath say:

1. The name of the applicant: Pathfinder Irrigation District.

2. The postoffice address of the applicant: Mitchell, Nebraska.

3. The use to which water is to be applied is: Irrigation and domestic purposes.

4. The name of the Enlargement is: Guernsey Enlargement Interstate Canal.

5. The source of the proposed appropriation is: Water stored in the Guernsey Reservoir under Permit No. 3905 Res. and supplied from the North Platte River, which is a tributary of.....

6. (a) The headgate of the ditch to be enlarged is located S. 32° 58′ E. 3201 feet distant from the W¼ corner of Section 2, T. 26 N., R. 65 W., and is in the Lot 5 of Section 11, T. 26 N., R. 65 W.

(b) Said ditch is 150 miles long and has a carrying capacity at the headgate of 2317 cubic feet per second.

United States Exhibit 24

(c) The total area now irrigated from said ditch is 132,955.4 acres, being lands described in Permits Nos. 3409 and 1398 enl.

7. The proposed diversion and appropriation of water is to be made by means of:

(a) The enlargement of the ditch, without extension? Enlarged use of water only. No physical enlargement necessary.

(b) The enlargement and extension of the ditch? .....

The head of the extension is located.....feet distant from the.....corner of Section....., T..... N., R. ..... W., and is in the.....Section....., T. .....N., R.....W.

8. The said ditch as enlarged will be 150 miles long and will have a carrying capacity at the headgate of 2317 cubic feet per second.

9. (a) The nature of the material to be moved is: None.

(b) Number, length and size of tunnels.....

(c) Number, length and size of flumes.....

10. The estimated cost of said enlargement is $100.00 Dollars.

11. Construction on proposed work will begin within one year from date of approval of this application.

12. The time required to complete the enlargement is 3 years from December 31st, 1934.

13. The time required to complete the application of water to the beneficial uses stated in this application is 4 years from December 31st, 1934.

14. The accompanying map is prepared in accordance with the Manual of Regulations and Instructions for Filing Applications in the State Engineer's office and is hereby declared a part of this application.

15. The land to be irrigated by this enlargement is described in the following tabulation:

(Give Irrigable Acreage in Each 40-Acre Subdivision. Designate Ownership of Land, Government, State or Private. If Private, Give Names of Owners)

Township	Range	Sec.	NE¼ NE¼	NE¼ NW¼	NE¼ SW¼	NE¼ SE¼	NW¼ NE¼	NW¼ NW¼	NW¼ SW¼	NW¼ SE¼	SW¼ NE¼	SW¼ NW¼	SW¼ SW¼	SW¼ SE¼	SE¼ NE¼	SE¼ NW¼	SE¼ SW¼	SE¼ SE¼	Totals

This application proposes the use of water stored in the Guernsey Reservoir under Permit No. 3905 Res. on certain lands lying under the Interstate Canal and described in the attached tabulation and upon the accompanying maps.

Total Acreage Under This Enlargement 115,104.4

(Signed) T. W. PARRY,
Manager, Pathfinder Irrigation District.

United States Exhibit 24

The State of Wyoming, County of Laramie, ss.

I hereby certify that the foregoing application was signed in my presence and sworn to before me by T. W. Parry, this 19th day of September, 1934, Elvera L. Shull, Notary Public. (Seal.) My commission expires Nov. 24, 1934.

Consent to Enlarge.

The Secretary of the Interior, United States of America, the sole owner of the Interstate Canal, taking water from North Platte River under Permit No. 1398 Enl. for and in consideration of conditions of contract dated July 31, 1926, do hereby give my free and voluntary consent to the enlargement or extension of, and to the use of water through, the said ditch, for the irrigation of 115,104.4 acres, by Pathfinder Irrigation District, according to the terms of his application for enlargement.

Dated Sept. 19, 1934.

Notice of expiration of time for commencement of work mailed July 31, 1935.

Notice of commencement of work received Sept. 20, 1935.

Notice of completion beneficial use received Sept. 20, 1935.

C. F. GLEASON,
Superintendent of Power, Bureau of Reclamation, Guernsey, Wyoming, for and on behalf of the Secretary of the Interior.

The State of Wyoming, State Engineer's Office, ss.

This is to certify that I have examined the foregoing application and do hereby grant the same subject to the following limitations and conditions: Secondary Permit, see Primary Permit No. 3905 Res.

This permit grants only the right to use surplus water of the stream when all prior rights are satisfied.

Construction of proposed work shall begin within one year from the date of approval.

United States Exhibit 24

The time for completing the work shall terminate on December 31st, 1937.

The time for completing the application of water to beneficial use shall terminate on December 31st, 1938, and final proof of appropriation shall be made within five years thereafter.

The amount of the appropriation shall be limited to the amount of water beneficially used from water stored in the Guernsey Reservoir under Permit No. 3905 Res.

Witness my hand this 23rd day of November, A.D. 1934.

EDWIN W. BURRITT,
State Engineer.

The State of Wyoming, State Engineer's Office, ss.

This instrument was received and filed for record on the 19th day of September, A. D. 1934, at 3:30 o'clock P.M.

EDWIN W. BURRITT,
State Engineer.

Recorded in Book 17 of Enlargements, on page 267.

UNITED STATES EXHIBIT 25.

Permit No. 4969, Enlargement

E4

Notice of Completion Received Nov. 1, 1937. Proof Submitted .....

Secondary Application Guernsey Reservoir

Application for a Permit to Divert and Appropriate the Water of the State of Wyoming

Water Division No. 1. District No. ....

Enlargement of the Tristate Canal (Enlargement of Northport Canal)

I, P. G. Gebauer, President, Northport Irrigation District of Northport, County of Morrill, State of Nebraska, being duly sworn according to law, upon my oath say:

1. The name.... of the applicant Northport Irrigation District.

2. The postoffice address.... of the applicant Northport, Nebraska.

3. The use to which water is to be applied is Irrigation and domestic purposes.

4. The name of the Enlargement is Guernsey Enlargement of Northport Extension Tristate Canal.

5. The source of the proposed appropriation is Water stored in the Guernsey Reservoir under Permit No. 3905 Res. and supplied from the North Platte River. which is a tributary of .....

6. (a) The headgate of the Tristate Canal is located S. 76 degrees and 0 minutes W. 1960 feet distant from the NE corner of Section 10, T. 23 N., R. 58 W., a[illegible] is in the NW¼NE¼ of Section 10, T. 23 N., R. 58 W.

(State of Nebraska)

(b) Said ditch is 75 miles long and has a carrying capacity at the headgate of 1300 cubic feet per second.

United States Exhibt 25

(c) The total area now irrigated from said ditch is 79,183.6 acres, being lands described in Permit No. 1398 Enl. and Nebraska appropriations.

7. The proposed diversion and appropriation of water is to be made by means of:

(a) The enlargement of the ditch, without extension? Enlarged use of water only. No physical enlargement necessary.

(b) The enlargement and extension of the ditch?

.....

The head of the Northport extension is located North 1350 feet distant from the SE corner of Section 15, T. 21 N., R. 51 W., and is in the NE¼SE¼ of Section 15, T. 21 N., R. 51 W.

8. The said ditch is 28 miles long and has a carrying capacity at the headgate of 300 cubic feet per second.

9. (a) The nature of the material to be moved is None.

(b) Number, length and size of tunnels .....
Area irrigated under Northport Canal—16,299.4 acres. See Permit 1398 Enl.

(c) Number, length and size of flumes .....

10. The estimated cost of said enlargement is $100.00
..... Dollars

11. Construction on proposed work will begin within one year from date of approval of this application.

12. The time required to complete the enlargement is no year.... from December 31st, 19.....

13. The time required to complete the application of water to the beneficial uses stated in this application is 4 years from December 31st, 1934.

14. The accompanying map is prepared in accordance with the Manual of Regulations and Instructions for Fil-

ing Applications in the State Engineer's Office and is hereby declared a part of this application.

15. The land to be irrigated by this enlargement is described in the following tabulation:

(Give Irrigable Acreage in Each 40-Acre Subdivision. Designate Ownership of Land, Government, State or Private. If Private, Give Names of Owners)

Township	Range	Sec.	NE¼ NE¼	NE¼ NW¼	NE¼ SW¼	NE¼ SE¼	NW¼ NE¼	NW¼ NW¼	NW¼ SW¼	NW¼ SE¼	SW¼ NE¼	SW¼ NW¼	SW¼ SW¼	SW¼ SE¼	SE¼ NE¼	SE¼ NW¼	SE¼ SW¼	SE¼ SE¼	Totals

This application proposes the use of water stored in the Guernsey Reservoir, located in the State of Wyoming, under Permit No. 3905 Res., on certain lands of the Northport Irrigation District irrigated by the Northport Canal, an enlargement of the Tristate Canal, which diverts water from the North Platte River in the State of Nebraska. These lands are described in the attached tabulation and upon the accompanying maps.

Total Acreage Under This Enlargement 16,299.4

E.S. R.J.

(Signed) P. G. GEBAUER.

United States Exhibit 25

The State of Wyoming, County of Laramie, ss.

I hereby certify that the foregoing application was signed in my presence and sworn to before me by P. G. Gebauer this 19th day of September, 1934. Elvera L. Shull, Notary Public. My commission expires Nov. 24, 1934. (Seal).

Consent to Enlarge

The Secretary of the Interior, U. S. A. the sole owner.... of the Guernsey Reservoir, storing water from the North Platte River under Permit No. 3509 Res. for and in consideration of conditions of contract dated Nov. 24, 1926, do hereby give my free and voluntary consent to the enlargement or extension of, and to the use of water through, the said ditch, for the irrigation of 16,299.4 acres, by the Northport Irrigation District, according to the terms of its application for use of storage. Dated Sept. 19, 1934.

C. F. GLEASON, Superintendent of Power, Bureau of Reclamation, Guernsey, Wyoming. For and on behalf of the Secretary of the Interior.

Notice of expiration of time for commencement of work mailed Jul. 31, 1935.

Notice of expiration mailed Sep. 30, 1937.

Notice of commencement of work (illegible) Nov. 1, 1937 in form of affidavit.

Notice of expiration of time for completion to beneficial use mailed, Sep. 30, 1938.

Notice of (illegible) beneficial use received Oct. 25, 1938. The State of Wyoming, State Engineer's Office, ss.

This is to Certify that I have examined the foregoing application and do hereby grant the same subject to the following limitations and conditions: Secondary Permit, see Primary Permit No. 3905 Res. Permit granted for the reason that the source of supply (the Guernsey Reser-

voir) is located in the State of Wyoming and within the jurisdiction of the State Engineer of Wyoming.

Construction of proposed work shall begin within one year from the date of approval.

The time for completing the work shall terminate on December 31st, 1937.

The time for completing the application of water to beneficial use shall terminate on December 31st, 1938, and final proof of appropriation shall be made within five years thereafter.

The amount of the appropriation shall be limited to the amount of water beneficially used from water stored in the Guernsey Reservoir under Permit No. 3905 Res.

Witness my hand this 23rd day of November, A. D. 1934.

EDWIN W. BURRITT,
State Engineer.

The State of Wyoming, State Engineer's Office, ss.

This instrument was received and filed for record on the 19th day of Septe.ber, A. D. 1934, at 3:30 o'clock P. M.

Recorded in Book 17 of Enlargements, on page 268.

EDWIN W. BURRITT,
State Engineer.

UNITED STATES EXHIBIT 26.

Permit No. 5014, Enlargement

E4

Notice of Completion Received Oct. 22, 1937 from Gering-Ft. Laramie Irrigation Dist. (C. F. Gleason)

Application for a Permit to Divert and Appropriate the Water of the State of Wyoming

Secondary Permit

Water Division No. 1. District No. ....

Enlargement of the Fort Laramie Canal.

I, C. F. Gleason, Superintendent of Power, Bureau of Reclamation, of Guernsey, County of Platte, State of Wyoming, being duly sworn according to law, upon my oath say:

1. The names of the applicants Goshen Irrigation District and Gering-Fort Laramie Irrigation District.

2. The postoffice addresses of the applicants Goshen Irrigation District, Torrington, Wyoming; Gering & Fort Laramie Irrigation District, Gering, Nebraska.

3. The use to which water is to be applied is irrigation and domestic.

4. The name of the Enlargement is Guernsey Enl. Fort Laramie Canal.

5. The source of the proposed appropriation is water stored in the Guernsey Reservoir under Permit No. 3905 Res. and supplied from the North Platte River which is a tributary of the Platte River.

6. (a) The headgate of the ditch to be enlarged is located N. 15 degrees 22 minutes E. 5,200 feet distant from the SW corner of Section 11, T. 26 N., R. 65 W., and is in the NW¼NW¼ of Section 11, T. 26 N., R. 65 W.

(b) Said ditch is 148 miles long and has a carrying capacity at the headgate of 1,540 cubic feet per second.

(c) The total area now irrigable from said ditch is 110,753 acres, being lands described in Permit No. 18544.

7. The proposed diversion and appropriation of water is to be made by means of:

(a) The enlargement of the ditch, without extension? Enlarged use only.

(b) The enlargement and extension of the ditch?.... The head of the extension is located ..... feet distant from the ..... corner of Section ....., T. ..... N., R. ..... W., and is in the ..... of Section ....., T. ..... N., R. ..... W.

8. The said ditch as enlarged will be 148 miles long and will have a carrying capacity at the headgate of 1,540 cubic feet per second.

9. (a) The nature of the material to be moved is None.

(b) Number, length and size of tunnels None under this enlargement.

(c) Number, length and size of flumes None under this enlargement.

10. The estimated cost of said enlargement is One Hundred ..... Dollars ($100.00)

11. Construction on proposed work will begin within one year from date of approval of this application.

12. The time required to complete the enlargement is three (3) years from December 31st, 1934

13. The time required to complete the application of water to the beneficial uses stated in this application is five (5) years from December 31st, 1934

14. The accompanying map is prepared in accordance with the Manual of Regulations and Instructions for Filing applications in the State Engineer's Office and is hereby declared a part of this application.

15. The land to be irrigated by this enlargement is described in the following tabulation:

United States Exhibit 26

(Give Irrigable Acreage in Each 40-Acre Subdivision. Designate Ownership of Land, Government, State or Private. If Private, Give Names of Owners)

Township	Range	Sec.	NE¼ NE¼	NE¼ NW¼	NE¼ SW¼	NE¼ SE¼	NW¼ NE¼	NW¼ NW¼	NW¼ SW¼	NW¼ SE¼	SW¼ NE¼	SW¼ NW¼	SW¼ SW¼	SW¼ SE¼	SE¼ NE¼	SE¼ NW¼	SE¼ SW¼	SE¼ SE¼	Totals

This application proposes the use of water stored in Guernsey Reservoir under Permit No. 3905 Res. on certain lands lying under the Fort Laramie Canal, Permit No. 18544, and described in the attached tabulation and upon the accompanying maps.

Description of Lands covered by this Application for Secondary Supply from water stored in the Guernsey Reservoir under Permit No. 3905 Res.

Summary

Lands in Wyoming (Goshen Irrigation District)

Lands with original supply under Fort Laramie Canal, Permit No. 18544		54,576
Lands with original supply from Horse Creek and Long Draw (Sheet No. 16)		861
	Total	55,437

Lands in Nebraska (Gering-Fort Laramie Irrigation District)

Lands with original supply under Fort Laramie Canal		53,467
Lands with original supply from Horse Creek and other sources (Sheet No. 17)		1,849
	Total	55,316
Total		110,753

United States Exhibit 26

Consent to Enlarge

United States of America, the sole owner of the Fort Laramie canal and Guernsey reservoir, taking water from the North Platte river under Permits 3905 Res. and 18544, does hereby give its free and voluntary consent to the enlargement or extension of and to the use of water through the said Fort Laramie canal for the irrigation of about 110,000 acres by the Goshen Irrigation District and the Gering and Fort Laramie Irrigation District, according to the terms of their application for enlargement. The United States of America states that the Gering and Fort Laramie Irrigation District has an interest in the Guernsey reservoir by virtue of its agreement with the United States dated November 5, 1926, and that the Gering and Fort Laramie Irrigation District has an interest in the Guernsey reservoir by virtue of its agreement with the United States dated November 2, 1926, which agreements are in full force and effect at the date hereof.

Dated at Cheyenne, Wyo., this 12th day of April, 1935.

UNITED STATES OF AMERICA
By C. F. GLEASON
Superintendent of Power
Bureau of Reclamation.

The State of Wyoming, State Engineer's Office, ss.

This Is To Certify that I have examined the foregoing application and do hereby grant the same subject to the following limitations and conditions: Secondary Permit. See Primary Permit No. 3905 Res.

This permit grants only the right to use surplus water of the stream when all prior rights are satisfied.

Work will begin within one year from date of approval.

The time for completing construction shall terminate December 31st, 1937.

The time for completing the appropriation of water to beneficial use shall terminate December 31st, 1939, and

final proof of appropriation shall be made within five years thereafter.

The amount of the appropriation shall be limited to the amount of water beneficially used from water stored in the Guernsey Reservoir under Permit No. 3905 Res.

Witness my hand this 25th day of October, A. D. 1935.

EDWIN W. BURRITT,
State Engineer.

The State of Wyoming, State Engineer's Office, ss.

This instrument was received and filed for record on the 12th day of April, A. D. 1935, at 2:00 o'clock P. M.

EDWIN W. BURRITT,
State Engineer.

Recorded in Book 18 of Enlargements, on pages 24, 24a, 24b, 24c, and 24d.

June 30, 1936—Notices of expiration of time for commencement mailed.

July 3, 1936—Notice of commencement received from Bert Adams, Supt., Goshen Irrigation District.

Aug. 24, 1936—Notice of commencement received from Gering-Ft. Laramie Irrigation Dist., by C. G. Klingman, Sec'y.

Oct. 27, 1936—Notice of completion received from Goshen Irrigation Dist., by Bert Adams, Supt.

Sep. 30, 1937—Notice of expiration mailed.

Nov. 20, 1937—Notice of completion received from Gering & Ft. Laramie Irr. Dist. (C. G. Klingman, Sec'y)

August 31, 1939—Notice of expiration of time for completion to beneficial use mailed to both applicants.

September 12, 1939—Time for completion to beneficial use extended to Dec. 31, 1940.

L. C. BISHOP
State Engineer.

UNITED STATES EXHIBIT 31.

Permit No. 18684.

E4 & B5

Notice of Completion Received February 24, 1937. Proof Submitted.....

Application for a Permit to Divert and Appropriate the Water of the State of Wyoming.

Water Division No. 1 District No.....

I, H. W. Bashore, Construction Engineer, United States Bureau of Reclamation, of Casper, County of Natrona, State of Wyoming, being duly sworn according to law, upon my oath say:

1. The name of the applicant is: United States of America, Department of the Interior, Bureau of Reclamation.

2. The postoffice address of the applicant: Washington, D.C.

3. The use to which the water is to be applied is: Domestic and municipal water supply, Seminoe dam and government camp.

4. The name of the pipeline is: Morgan Creek-Seminoe Dam Pipeline.

5. The source of the proposed appropriation is Morgan Creek which is a tributary of North Platte River.

6. The headgate of the proposed pipeline is located N. 82° 47′ W. 4651 feet distant from the SE corner of Section 5 T. 25 N., R. 84 W., and is in the SW¼ of Section 5, T. 25 N., 84 W.

7. The said pipeline is to be 3450 feet long.

8. The carrying capacity of the ditch or canal at the headgate is 11/100 cu. ft. per sec.

9. (a) The nature of the material to be moved is rock.

(b) Number, length and size of pipeline: One, 3450 feet, 2½, 4" diameter.

(c) Number, length and size of flumes: None.

10. The estimated cost of said works is thirty-three thousand ($33,000.00) Dollars.

11. Construction on proposed work will begin within one year from date of approval of this application.

12. The time required for the completion of the ditches and other distributing works is one year from December 31st, 1936.

13. The time required to complete the application of water to the beneficial uses stated in this application is one year from December 31st, 1936.

14. The accompanying map is prepared in accordance with the Manual of Regulations and Instructions for Filing Applications in the State Engineer's Office and is hereby declared a part of this application.

15. The land to be irrigated is described in the following tabulation:

(Give Irrigable Acreage in Each 40-Acre Subdivision. Designate Ownership of Land, Government, State or Private. If Private, Give Name of Owners)

Township	Range	Sec.	NE¼ NE¼	NE¼ NW¼	NE¼ SW¼	NE¼ SE¼	NW¼ NE¼	NW¼ NW¼	NW¼ SW¼	NW¼ SE¼	SW¼ NE¼	SW¼ NW¼	SW¼ SW¼	SW¼ SE¼	SE¼ NE¼	SE¼ NW¼	SE¼ SW¼	SE¼ SE¼	Totals

Domestic and municipal water supply for Seminoe Dam and Government Camp.

General Description.

System: Pressure pipe line, pumping from elevation 6350 through 2½-inch pipe 1935 feet in length to water tank at elevation 6967.83 and distributed by gravity through 1495 feet of 4-inch pipe to points of use.

Diversion: Water collected in concrete gallery placed on rock foundation in Morgan Creek and equipped with necessary drains and valves.

Pumping Equipment: Pump is electric motor-driven, horizontal 3" x 5" duplex pump with a capacity of 50 gallons per minute (11/100 second feet).

Control: Local and remote both hand and automatic float operated. Pump characteristics.

Static head—617 feet.

Operating head—725 feet, maximum design, Normal 670 feet.

Capacity 50 gallons per minute (11/100 second feet)

Diameter suction—2-inch. Diameter discharge—2-inch.

Diameter pipeline—2¼-inch. 9.96 H.P.

H.P. equals $\frac{Q \times H}{8.8}$ equals $\frac{.11 \times 725}{8.8}$ equals 9.06 H.P.

Efficiency—65.6% 9.067.656 equals 13.8 H.P.

Motor Installation: General Electric Type K365 220-volt, 60-cycle, squirrel cage induction rated 15 H.P. at continuous operation.

Total Number of Acres to Be Irrigated: None.

(Signed) H. W. BASHORE, *Construction Engineer.*
U. S. Bureau of Reclamation.

The State of Wyoming, County of Natrona, ss.

I hereby certify that the foregoing application was signed in my presence and sworn to before me by H. W. Bashore this 19th day of November, 1936. Albert E. Tweed, Notary Public. My commission expires Feb. 10, 1938. (Seal.)

The State of Wyoming, State Engineer's Office, ss.

This is to Certify that I have examined the foregoing application and do hereby grant the same subject to the following limitations and conditions: This permit grants only the right to use surplus water of the stream when all prior rights are satisfied.

Construction of proposed work shall begin within one year from the date of approval.

The time for completing the work shall terminate on December 31, 1937.

The time for completing the application of water to beneficial use shall terminate on December 31, 1937, and final proof of appropriation shall be made within five years thereafter.

The amount of appropriation shall be limited to the amount beneficially used for domestic and municipal water supply on or before December 31, 1937, not to exceed 0.11 cubic foot per second of time.

Witness my hand this 18th day of December, A.D. 1936.

JOHN D. QUINN, *State Engineer.*

The State of Wyoming, State Engineer's Office, ss.

This instrument was received and filed for record on the 21st day of November, A.D. 1936, at 9:00 o'clock A.M.

JOHN D. QUINN, *State Engineer.*

Recorded in Book 61 of Applications, on Page 37.

Notice of commencement of work received Feb. 24, 1937.

United States Exhibit 31

Notice of completion of the application of water to beneficial use received Feb. 24, 1937.

Certification.

United States of America, State of Wyoming, ss.

I, John D. Quinn, of Cheyenne, Wyoming, the duly appointed, qualified and acting State Engineer in and for the State of Wyoming, do hereby certify that the above and foregoing is a full, true and complete copy of Permit No. 18684, so full and complete as the original thereof appears on file and of record in the State Engineer's Office.

In Witness Whereof I have hereunto set my hand in the City of Cheyenne, in the State of Wyoming, on this 12th day of April, 1938.

JOHN D. QUINN, *State Engineer.*

UNITED STATES EXHIBIT 32.

Permit No. 18682. Form A

Notice of Completion Received..... Proof Submitted.....

Application for a Secondary Permit to Divert and Appropriate the Water of the State of Wyoming.

Water Division No. 1 District No.....

I, H. W. Bashore, Construction Engineer, United States Bureau of Reclamation, of Casper, County of Natrona, State of Wyoming, being duly sworn according to law, upon my oath say:

1. The name of the applicant is United States of America, Department of the Interior, Bureau of Reclamation.

2. The postoffice address of the applicant is Washington, D. C.

3. The use to which the water is to be applied is domestic, stock, irrigation, water power and municipal.

4. The name of the ditch or canal is Casper Canal.

5. The source of the proposed appropriation is the storage between contour elevations 5500 and 5487 in Alcova reservoir, which is in the channel of the North Platte River, amounting to 27,660 acre feet.

6. The headgate of the proposed ditch or canal is located S. 19° 17′ W. 4121.? feet distant from the NE corner of Section 23 T. 30 N., R. 83 W., and is in the SW¼SE¼ of Section 23 T. 30 N., R. 83 W.

7. The said ditch or canal is to be 106.0 miles long.

8. The carrying capacity of the ditch or canal at the headgate is 1200 cu. ft. per sec.

9. (a) The nature of the material to be moved is limestone, sandstone, shale, clay, sandy loam.

(b) Number, length and size of tunnels: #1—Dia.

14'—2854' long; #2—Dia. 14'—4402' long; #3—Dia. 14'—1200' long; #4—14' Dia.—2000' long; #5—13¾' Dia.—1900' long; #6—13¾' Dia.—5400' long.

(c) Number, length and size of siphons: #1—14' dia.—300' long; #2—14' Dia.—200' long; #3—14' Dia.—300' long; #4—14' Dia.—250' long; #5—13' dia.—225' long; #6—13' Dia.—250' long; #7—13' Dia.—200' long; #8—13' Dia.—250' long; #9—13' Dia.—400' long; #10—13' Dia.—250' long; #11—9' Dia.—400' long; #12—9' Dia.—3800' long; #13—9' Dia.—400' lang, and 6 lateral siphons Dia. from 2' to 6'—Total aggregate length 26,700 feet.

10. The estimated cost of the irrigation works including the Alcova and Seminoe reservoirs is $17,250,000.

11. Construction on proposed work was begun as follows: Casper Canal under Permit No. 18488 on April 10, 1934; Alcova dam approved for construction by the State Engineer under Section 122-1401 Wyo. Rev. Statutes 1931 on November 27, 1933.

12. The time required for the completion of the works is as follows: Casper Canal September 14, 1939; Alcova dam on date fixed in Primary Permit, application for which is pending.

13. The time required to complete the application of water to the beneficial uses stated in this application is on or before September 14, 1944.

14. The accompanying map is prepared in accordance with the Manual of Regulations and Instructions for Filing Applications in the State Engineer's Office and is hereby declared a part of this application.

15. The land to be irrigated is described in the following tabulation, consisting of 58 sheets numbered 1 to 58 and attached hereto and made a part hereof.

(Give irrigable acreage in each 40-acre subdivision. Designate ownership of land, Government, State or Private. If Private, give names of owners.)

* * * * *

United States Exhibit 32

The State of Wyoming, State Engineer's Office, ss.

This is to Certify that I have examined the foregoing application and do hereby grant the same subject to the following limitations and conditions:

Secondary Permit, see Primary Permit No. 4630 Res.

Construction of proposed work shall begin within one year from the date of approval.

The time for completing the work shall terminate on December 31, 1939.

The time for completing the application of water to beneficial use shall terminate on December 31, 1944, and final proof of appropriation shall be made within five years thereafter.

The amount of appropriation shall be limited to 27,660 acre feet of water stored in the Alcova Reservoir Permit No. 4630 Res. between contour elevations 5487 and 5500.

Witness my hand this 18th day of December, A. D. 1936.

JOHN D. QUINN, *State Engineer.*

The State of Wyoming, State Engineer's Office, ss.

This instrument was received and filed for record on the 25th day of April, A.D. 1936, at 9:45 o'clock A.M.

JOHN D. QUINN, *State Engineer.*

Recorded in Book 61 of Applications, on Page 35.
Notice of commencement of work received Feb. 24, 1937.

UNITED STATES EXHIBIT 33.

PERMIT NO. 18683. Form A

Notice of Completion Received..... Proof Submitted.....

Application for a Secondary Permit to Divert and Appropriate the Water of the State of Wyoming.

Water Division No. 1. District No.....

I, H. W. Bashore, Construction Engineer, United States Bureau of Reclamation, of Casper, County of Natrona, State of Wyoming, being duly sworn according to law, upon my oath say:

1. The name of the applicant is United States of America, Department of the Interior, Bureau of Reclamation.

2. The postoffice address of the applicant is Washington, D. C.

3. The use to which the water is to be applied is domestic, stock, irrigation, water power and municipal.

4. The name of the ditch or canal is Casper Canal.

5. The source of the proposed appropriation is water stored in the Seminoe Reservoir in the channel of the North Platte River, construction of which is in progress under Permit No. 4552 Res., having a capacity of 965,000 acre-feet above dead storage elevation 6252.0.

6. The headgate of the proposed ditch or canal is located S. 19° 17′ W. 4121.2 feet distant from the NE corner of Section 23 T. 30 N., R. 83 W., and is in the SW¼SE¼ of Section 23 T. 30 N., R. 83 W.

7. The said ditch or canal is to be 106.0 miles long.

8. The carrying capacity of the ditch or canal at the headgate is 1200 cu. ft. per sec.

9. (a) The nature of the material to be moved is limestone, sandstone, shale, clay, sandy loam.

(b) Number, length and size of tunnels: #1—Dia. 14′—2854′ long; #2—Dia. 14′—4402′ long; #3—Dia. 14′—1200′ long; #4—Dia. 14′—2000′ long; #5—13¾′ Dia.—1900′ long; #6—13¾ Dia.—5400′ long.

(c) Number, length and size of siphons: #1—14′ Dia.—300′ long; #2—14′ Dia.—200′ long; #3—14′ Dia.—300′ long; #4—14′ Dia.—250′ long; #5—13′ Dia.—225′ long; #6—13′ Dia.—250′ long; #7—13′ Dia.—200′ long; #8—13′ Dia.—250′ long; #9—13′ Dia.—400′ long; #10—13′ Dia.—250′ long; #11—9′ Dia.—400′ long; #12—9′ Dia.—3800′ long; #13—9′ Dia.—400′ long, and 6 lateral siphons Dia. from 2′ to 6′—Total aggregate length 26,700 feet.

10. The estimated cost of the irrigation works including the Seminoe and Alcova Reservoirs is $17,250,000.

11. Construction on proposed work was begun as follows: Casper Canal under Permit No. 18488 on April 10, 1934; Seminoe Dam under Permit No. 4552 Res. on December 1, 1933.

12. The time required for the completion of the works is as follows: Casper Canal September 14, 1939; Seminoe Dam December 31, 1937.

13. The time required to complete the application of water to the beneficial uses stated in this application is on or before September 14, 1944.

14. The accompanying map is prepared in accordance with the Manual of Regulations and Instructions for Filing Applications in the State Engineer's Office and is hereby declared a part of this application.

15. The land to be irrigated is described in the following tabulation, consisting of 58 sheets numbered 1 to 58 and attached hereto and made a part hereof.

(Give irrigable acreage in each 40-acre subdivision. Designate ownership of land, Government, State or Private. If Private, give names of owners.)

* * * * *

United States Exhibit 33

The State of Wyoming, State Engineer's Office, ss.

This is to Certify that I have examined the foregoing application and do hereby grant the same subject to the following limitations and conditions: Secondary Permit, see Primary Permit No. 4552 Res.

Construction of proposed work shall begin within one year from the date of approval.

The time for completing the work shall terminate on December 31, 1939.

The time for completing the application of water to beneficial use shall terminate on December 31, 1944, and final proof of appropriation shall be made within five years thereafter.

The amount of appropriation shall be limited to the amount beneficially used on or before December 31, 1944 from water stored in the Seminoe Reservoir, Permit No. 4552 Res. which has a capacity of 965,000 acre-feet above dead storage elevation 6252.0.

Witness my hand this 18th day of December, A. D. 1936.

JOHN D. QUINN, *State Engineer.*

The State of Wyoming, State Engineer's Office, ss.

This instrument was received and filed for record on the 25th day of April, A.D. 1936, at 9:45 o'clock A.M.

JOHN D. QUINN, *State Engineer.*

Recorded in Book 61 of Applications, on Page 36.

Notice of commencement of work received Feb. 24, 1937.

UNITED STATES EXHIBIT 35.

State House, Lincoln, Nebraska.

I, George E. Johnson, State Engineer, Secretary of the State Board of Irrigation, Highways and Drainage do hereby certify that the attached is a true and verified copy of the original Application No. 768, filed in the office of the State Board of Irrigation, Highways and Drainage September 19, 1904.

GEO. E. JOHNSON,
State Engineer, Secretary.

Witness my hand and the seal of the State Board of Irrigation, Highways and Drainage this 18th day of May, 1918.

Application for a Permit to Construct the Pathfinder Reservoir and to Store the Unappropriated Waters of the North Platte River in the State of Wyoming.

Water Division No..... District No. .....

In conformity with the Reclamation Law of June 7th, 1902, I, John E. Field, District Engineer of the United States, Geological Survey, Reclamation Service, being duly sworn according to law, upon oath say:

1.—The name of the applicant is the Secretary of the Interior, U.S.A.

2.—The Post Office address of the applicant is Washington, D.C.

3.—The name of the stream from which the reservoir is to be filled and appropriation made is the North Platte River.

4.—The use to which the water is to be applied is irrigation, domestic and manufacture.

5.—The location of the proposed reservoir will be in Secs. 4, 5, 8, 9, 10, 15, 16, T. 26 N. R. 84 W.

Secs. 5, 6, 7, 8, 18, 19, 20, 28, 29, 30, 32, 33, T. 27 N. R. 84W.

Secs. 12 & 13, T. 27 N. R. 85 W.

Secs. 1, 11, 12, 13, 14, 23, 24, 25, T. 28 N. R. 85 W.

Sec. 19, T. 29 N. R. 83 W.

Secs. 1, 2, 3, 4, 5, 6, 7, 11, 12, T. 29 N. R. 85 W.

Secs. 25, 26, 27, 28, 29, 30, 32, 33, 34, 35, 36, T. 30 N. R. 85 W.

Secs. 5, 6, 7, 8, 9, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, T. 29 N. R. 84 W.

Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 15, 16, 17, 18, 19, 20, 21, 28, 29, 30, 31, 32, 33, T. 28 N. R. 84 W.

Secs. 31, T. 30 N. R. 84 W.

Described as follows:—

The dam of the said reservoir will be located in Sec. 19, T. 29 N., R. 83 W.; whence the W¼ corner bears N. 300′. Said dam is located across the North Platte River in a granite canyon measuring about 60′ wide, at extreme low water, at the bottom, and 160′, at the top, its height being approximately 200′. The water for said reservoir will be supplied from the flow of the North Platte River. The dam will be constructed of masonry composed of granite imbedded in hydraulic cement. It will be on the arch of gravity type, cyclopean in character. About 1000′ south of the main dam described above will be a secondary dam composed of a masonry retaining wall with loose rock and earth back filling. The plans for both the dams are submitted herewith.

6.—The area of the reservoir at high water mark is about 23000 acres, with a maximum depth of 210′, and approximate mean depth about 60′.

7.—The dimensions of the main dam are. Length on top 250′; length on bottom 60′; width on top 16′; width on bottom 144′; depth 220′; slope of front 1 to 20; slope of back 2 to 3; height of dam above water line when full 10′.

8.—The outlet and wasteway are as follows: A cut

through the solid granite on both sides of the dam by means of tunnels supplied with proper gates and operating devices. Dimensions of the tunnels are to be each 12' square.

9.—Cost of the same reservoir $1,250,000.

10.—Construction will begin on proposed works on or before December 31st, 1905.

11.—The time required for the completion of said works is four years from the beginning of construction.

JOHN E. FIELD.

State of Colorado, City and County of Denver, ss.

I hereby certify that the foregoing application was signed in my presence and sworn to before me by John E. Field this 15th day of September, A. D. 1904. George E. Moore, Notary Public. My commission expires June 18, 1908. (Seal)

App. 768.

Application for a Permit to Construct the Pathfinder Reservoir and to Store the Unappropriated Waters of the North Platte River in the State of Wyoming.

Water Division No. 1 A.

District No.....

State of Nebraska, Office of State Board of Irrigation, ss.

Filed in the office of the State Board of Irrigation, at 9 o'clock A. M., this 19th day of Sept., 1904.

ADNA DOBSON,
R.D.H.
State Engineer, Secretary.

Recorded in Misc. Record Book A on Page 45.

Plat 4109.

GENERAL STATEMENT.

To accompany filing for water right on the Pathfinder

Reservoir and the filings for water rights for ditches connected therewith, viz: The Casper Canal, Douglas Canal, Goshen Hole Canal, Fort Laramie Canal, Interstate Canal, and other canals constructed or to be extended and enlarged.

* * * * *

The Pathfinder Reservoir is located in Central Wyoming in Carbon and Natrona Counties, on the North Platte River, and is formed by the construction of a masonry dam 200 feet in height, in a narrow, granite gorge varying in width from 60 to 200 feet. The area covered by the high water line (5850 ft. above sea level) is about 22,000 acres, and the capacity is somewhat in excess of 1,000,000 acre feet. Extreme floods may cause the reservoir to reach an elevation of 5860 feet. Spillways, having a capacity of 50,000 cubic feet per second, will be provided. An outlet tunnel, approximately 10 x 13 feet, will be provided, with steel and concrete valves and gates, with an average discharge capacity of 5,000 cu. ft. per second.

It is proposed to store all the unappropriated waters of the North Platte River, and application is made for all such unappropriated water, which, however, may be taken direct from the river at the headgates of any of the canals constructed by the Government of the United States under the law of June 17th, 1902, or may be stored, as appears to the best interests and of the greatest benefit to said reservoir canals and the users of water thereunder.

At such times as the flow of water in the river is not sufficient to supply all valid water rights having an earlier priority than said Government reservoir and canals, as well as the canals constructed by the Government, then the water stored in the said Pathfinder Reservoir is to be released and allowed to flow down the channel of the North Platte River to the headgates of the said Government canals, where it will be diverted; and likewise any other canals which may have acquired a right from the United States to the use of such stored water, will be supplied from any surplus waters not needed by the Government canals, as their necessities may require and in accordance

with their rights in said reservoir, with any surplus above that needed by the Government canals, and the lands thereunder. It is the intention to irrigate all lands shown on the accompanying plats, whether under existing canals or under projected canals or extensions.

Lands under the Fort Laramie Canal may be supplied from the Goshen Hole Canal, if it is found to be more feasible to irrigate all the land under the Goshen Hole Canal from one system, rather than from two as shown herein. In that case, the entire diversion will be made at the head of the Goshen Hole Canal and the same will be extended on the lines occupied by the lower portion of the Fort Laramie Canal.

On the other hand, the Interstate Canal may be reduced in size and a low line canal constructed to irrigate lands east and north of Bayard, in order to avoid the necessity of carrying the water for so long a distance.

It is expected to construct numerous small reservoirs along the lines of the several canals, in order to meet the demand for large amounts of water during the short period of maximum use. These reservoirs have not been definitely located. Those under examination are:—

Under the Goshen Hole Canal:—Two in northeasterly corner of twp. 23 N, R. 64 and 65 W., with an aggregate capacity of about 75,000 acre feet.

Under the Fort Laramie Canal:—One on Cherry Creek in the southeasterly corner of twp. 24 N., R. 62 W., capacity undetermined; one on Horse Creek in the northerly end of twp. 22 N., R. 60 W., capacity undetermined.

Under the Interstate Canal:* One in Secs. 5, 6, 7 and 8, Twp. 23 N., R. 54 W., capacity about 50,000 acre feet; one in Secs. 9, 10, 15 and 16, Twp. 23 N., R. 54 W., capacity about 50,000 acre feet; one in Secs. 8, 9, 16 and 17, Twp. 23 N., R. 53 W.. capacity about 50,000 acre feet.

Goshen Hole Canal.—This canal contemplates a diversion dam 100 feet above low water at Fairbanks, Wyoming, where power may be generated for pumping water

along the lines of the several canals, especially along the Goshen Hole Canal, to lands shown on the plats, lying above the line of the canal and outlined in pink, the irrigable portion of which may reach 20,000 acres. The amount of irrigable land under this canal is estimated at 200,000 acres, 150,000 of which are in Wyoming and 50,000 in Nebraska. This includes the lands under the Fort Laramie Canal to a point west of Gering, Nebraska.

Fort Laramie Canal:—This canal is to have a common diversion with the Interstate Canal, consisting of a dam to raise the water 10 feet. This canal will be built as outlined, unless it is found more economical to increase the size of the Goshen Hole Canal to supply the lands under the Fort Laramie Canal. The amount of irrigable land is estimated to be about 150,000 acres, of which 40,000 are in Wyoming and 110,000 in Nebraska. Of the Nebraska lands, about 30,000 lie under the canals also and will be supplied, in time of shortage, with reservoir water.

The total amount of irrigable land under the Goshen Hole and Fort Laramie Canals, is estimated as follows:

Under the Fort Laramie, in Wyoming, 40,000 acres.

Under the Goshen Hole only in Wyoming, 120,000 acres.

Under the Fort Laramie in Nebraska, 110,000 acres.

Under the Goshen Hole only in Nebraska, 20,000 acres.

The right is asked, also, to irrigate all other lands on the south side having no water supply or an insufficient supply, to be accomplished by the enlargement and extension of existing canals.

Interstate Canal. This canal contemplates the enlargement of the Whalen Falls Canal and continued easterly to the limit of irrigable land, and a right to irrigate all the irrigable lands on the north side of the North Platte River, supplementing those with an inadequate supply at any season and furnishing a full right to all others. If it is more economical, it is the intention to build a lower line canal to irrigate the lands furthest east. It appears

at present that a canal heading at about the same point as the Winters Creek Canal would accomplish this. In this case, the capacity of the Interstate Canal proper would be reduced.

There are included herein, besides this general statement:—

An index map, showing the system as a whole;

A plat of the Pathfinder Reservoir, on a scale of 2 inches to the mile;

Plats and statement of the Casper Canal;

Plats and statement of the Douglas Canal, South Side;

Plats and statement of the Goshen Hole Canal;

Plats and statement of the Fort Laramie Canal;

Plats and statement of the Interstate Canal.

App. No. 768 (Corrected).

State of Nebraska, Office State Board of Irrigation, ss.

Filed in the office of the State Board of Irrigation, at 9 o'clock A. M., this 25 day of Nov. 1904, and recorded in Book A of Misc. Rec. at page 47 and Book 5 Record of Applications on Page 6.

ADNA DOBSON,
State Engineer, Secretary,
Per R. D. H.

UNITED STATES EXHIBIT 44.

4—021

Form A. Department of the Interior.

Water-Right Application.

Act June 17, 1902 (32 Stat., 388).

North Platte Project,

U. S. Land Office, Alliance, Nebraska.

Serial No. 06556.

Homesteads Under the Reclamation Act.

March 5th, 1913.

I, Adam Bower, do hereby apply for a water right under the Interstate Unit, North Platte Project, subject to the provisions of the act of Congress approved June 17, 1902 (32 Stat., 388) known as the Reclamation Act, and the rules and regulations established thereunder, the water supplied in pursuance thereof to be used for the irrigation of, and to be appurtenant to, 108 acres of irrigable land, as shown on plats approved by the Secretary of the Interior, within the area described as follows:

Farm Unit "B" being the North West Quarter (NW ¼) of Section Twenty seven (27) in Township Twenty four (24) north of Range Fifty six (56) west of the sixth Principal Meridian. Section ....., Township ....., Range ....., ... Meridian, an area of 160 acres; the said land having been entered by Edith Erickson under the said Reclamation Act by Homestead Application No. 12123, on the 31st day of May, 1907.

The quantity of water to be furnished hereunder shall be 2½ acre-feet of water per annum per acre of irrigable land, as aforesaid, measured at the land, ...

..... or so much thereof as shall constitute the proportionate share per acre from the water supply actually available for the lands under said project: Provided, That the supply furnished shall be limited to the

amount of water beneficially used on said irrigable land: Provided, however, that if measuring devices are not installed at the land, an increase, deemed reasonable by the Reclamation Service official in charge of the project, shall be made for losses of water after passing the point of measurement.

I agree to pay for said water right the estimated cost of construction as fixed by the Secretary of the Interior, namely, the sum of $55.00 per acre for 108 acres of irrigable land, ...
.....
.....
.....
.....
in 10 annual installments, and to pay promptly when due the annual installments and the maintenance and operating charges duly assessed against said land on account of said water right.

I further agree that, upon my failure to comply with the terms of said Reclamation Act and the regulations thereunder, this application shall be subject to cancellation by the Secretary of the Interior, with the forfeiture of all rights acquired thereunder and of all payments made thereon.

This application must bear the certificate, as hereto attached, of the water users' association under this project, which has entered into contract with the Secretary of the Interior.

If the Secretary of the Interior has made no contract with a water users' association organized under this project, I agree to file, upon his direction, evidence of membership in the water users' association organized under the said project; in default of which this application shall be subject to cancellation by the Secretary of the Interior, with the forfeiture of all rights acquired thereunder and of all payments made thereon.

And, being duly sworn, I further depose and say that

I have made no application, now uncanceled, for a water right under said act of Congress, appurtenant to land now owned or claimed by me, except as follows:

Application No. ....., ...Project, of ..... for ....., Section ....., Township ....., Range ....., ...Meridian, an area of ..... acres and containing ..... acres of irrigable land, as determined by the Secretary of the Interior; and that the present application is made in my own behalf and not at the instance or for the benefit of any other person or any association or corporation, either directly or indirectly.

his mark
ADAM X BOWER.

G. H. WHITMAN
JAS. T. WHITEHEAD
Witness to mark.

State of Nebraska, County of Scotts Bluff, ss.

Subscribed and sworn to before me this Fifth day of March, 1913.

G. H. WHITMAN,
(Seal) Notary Public.

My commission expires June 7th, 1917.

(The above affidavit may be sworn to before any officer authorized to admnister an oath.)

If the Secretary of the Interior has entered into a contract with a water users' association under the project, the following certificate must be filled out:

Scottsbluff, Neb., Apr. 1, 1913.

I hereby certify that the applicant for this water right has duly subscribed, or is the successor in interest of one who has subscribed, for the stock of this association for the lands described herein, and that all assessments levied

against said stock by said association have been fully paid up to date.

NORTH PLATTE VALLEY WATER USERS ASSOCIATION,
B. J. SEGER,
Secretary of Water Users Association.

(Corporate Seal)

Approved:
CHARLES SARGENT,
Acting Proj. Engineer, U. S. R. S., Apr. 5, 1913.

Public Notice Dec. 30, 1911.
Next Bldg. Chg. Due Dec. 1, 1912.
Next O & M. Chg. Due Dec. 1, 1912.

UNITED STATES EXHIBIT 45.

7-272

Department of the Interior.

Water-Right Application.

Homesteads Under the Reclamation Act.
Act June 17, 1902 (32 Stat., 388);

And acts amendatory thereof and supplementary thereto.

..... Project. Serial No. .....

State of ....Unit.

.....

(Date.)

1. I, ..., in pursuance of the provisions of the Reclamation Act approved June 17, 1902 (32 Stat., 388), and acts amendatory thereof, and supplementary thereto, especially the act approved August 9, 1912 (37 Stat., 265), and the act approved August 13, 1914 (38 Stat., 686), known as the Reclamation Extension Act, all hereinafter called the Reclamation Law and the rules and regulations established thereunder, do hereby apply for a water right for the irrigation of and to be appurtenant to ..... acres of irrigable land as shown on plats approved by the Secretary of the Interior within the tract described as follows:

.....

.....

..... Section .....

Township....., Range .....

..... Meridian, containing a total area of .....

acres; the said land having been entered by me subject to the Reclamation law by homestead application number ..... on the ..... day of ....., 19.....

2. The measure of the water right for said lands is that quantity of water which shall be beneficially used for the irrigation thereof, but in no case exceeding the share, proportionate to irrigable acreage, of the water supply actually available as determined by the Project Manager or other proper officer of the United States, or of its suc-

cessors in the control of the project, during the irrigation season for the irrigation of lands under said unit. If measuring devices are not installed at the land the amount of water delivered shall be determined by the Reclamation Service official in charge of the project, a reasonable allowance being made for losses of water after passing the point of measurement.

3. I agree to pay the annual installments of the construction charge fixed by the Secretary of the Interior in public notice issued in connection with the unit above described on ..... day of ....., 19....., at $..... per acre of irrigable land, and in addition thereto the annual charges for operation and maintenance as prescribed by the said Reclamation Extension Act, and all penalties which may accrue for failure to make payment at the proper time.

4. This application must bear the certificate, as hereto attached, of the water users' association under this project, which has entered into contract with the Secretary of the Interior.

5. If the Secretary of the Interior has made no contract with a water users' association organized under this project, I agree to file, upon his direction, evidence of membership in the water users' association organized under the said project; in default of which this application shall be subject to cancellation by the Secretary of the Interior, with the forfeiture of all rights acquired thereunder and of all payments made thereon.

6. And, being duly sworn, I further depose and say that my post-office address is .....; and that no other application, now uncanceled, has been made for a water right under the Reclamation law appurtenant to land now owned or claimed by me except as follows:

Application No. ....., ... Project, ... of ..... for .....; Section ....., Township ..... Range .....; .....Meridian, an area of ..... acres, and con-

taining ..... acres of irrigable land, as determined by the Secretary of the Interior; and that the present application is made in my own behalf and not at the instance or for the benefit of any other person or any association or corporation, either directly or indirectly.

.....
(Applicant sign here.)

State of .....
County of ..... } ss:

Subscribed and sworn to before me this ..... day of ....., 19.....

.....
(Official designation of officer.)

(Seal)

My commission expires .....

(The above affidavit may be sworn to before any officer authorized to administer an oath.)

If the Secretary of the Interior has entered into a contract with a water users' association under this project, the following certificate must be filled out:

....., 19.....

I hereby certify that the applicant signing this water-right application has duly subscribed, or is the successor in interest of one who has subscribed, for the stock of this association for the lands described herein, and that all assessments levied against said stock by said association have been fully paid up to date.

(Corporate Seal.)

.....
Secretary of .....
Water Users' Association.

This application is made under Public Notice of ...., 19.....

Total payment made for which Special Fiscal Agent's Receipt No. ....., dated ....., 19....., was issued ..... $.....

United States Exhibit 45

Said payment was applied as follows:

For C. due ....., 19....., $.....
For C. due ....., 19 ....., ...
For O. & M. due ....., 19....., $.....
For O. & M. due ....., 19....., ...

The next construction charge under this application is due ....., 19.....
The next O. & M. charge under this application is due ....., 19.....

United States Exhibit 45

UNITED STATES EXHIBIT 46.

.....
(Stamp date of receipt)

.....
(Number)

Department of the Interior

United States Reclamation Service

.....Irrigaion Project

APPLICATION FOR PERMANENT WATER RIGHT.

(For entries under the reclamation law.)

.....
(Date)

1. In Pursuance of the provisions of the act of June 17, 1902 (32 Stat., 388), and acts amendatory thereof or supplementary thereto, especially the act of August 9, 1912 (37 Stat., 265), and the act of August 13, 1914 (38 Stat., 686), all herein styled the reclamation law, and the rules and regulations established under said law,[1].....
.....and subject to the conditions named in this instrument, application is hereby made to The United States of America, herein styled United States, by the Undersigned, herein styled Applicant, for a permanent water right for the irrigation of and to be appurtenant to all of the irrigable area now or hereafter developed under the above-named project within the tract of land described in paragraph 2, as now or hereafter determined by the Secretary of the Interior.

2. *Description of land.*—The land on account of which a water right is desired, contains a total of..... acres, of which.....acres are now classed as irrigable, and is more particularly described as follows:

.....
..... Section....., Township .....,
Range....., ...M.

3. *Description of water right.*—The quantity of water to be furnished hereunder shall be that quantity which may be applied beneficially in accordance with good usage in the irrigation of the land described in paragraph 2: *Provided,* That in case of a shortage at any time the amount to be furnished shall be an equitable proportionate share, as nearly as practical operations will permit, of the water actually available at the time for all of the area being watered from the same source of supply, such proportionate share to be determined by the project manager. A plan of rotation shall be followed wherever, in the opinion of the project manager, it is practicable. If a measuring device is not installed at the point of delivery to the Applicant, the amount of water delivered shall be determined by the estimate of the project manager. In distributing and apportioning the water the project manager may take into consideration the character and necessities of the land. On account of drought, inaccuracy in distribution, or other cause, there may occur at times a shortage in the water supply, and while the United States will use all reasonable means to guard against such shortages, in no event shall any liability accrue against the United States, its officers, agents, or employees, for any damage direct or indirect arising therefrom.

4. *Agreement to pay water charges.*—The Applicant hereby agrees to pay to the United States the charges now and hereafter properly assessable against said land on account of said water right, together with any penalties for delinquency that may accrue, as provided by law and by the regulations, orders, and public notices now or hereafter promulgated by the Secretary of the Interior thereunder, such payment to be made in the manner, at the times, and subject to the conditions provided by said law, regulations, orders, and public notice, which charges are as follows: *(a)* An annual operation and maintenance charge for operating and maintaining the irrigation system, and *(b)* a construction charge to return the cost of the system. These charges are assessable against each acre of said land now and hereafter found irrigable by the Secretary of the In-

terior. Said land is now subject to public notice described as follows:[2]

.....

5. *Lien to secure payment of water charges.* For the purpose of securing payment to the United States of the obligations, and each of them, described in paragraph 4, under the conditions stated in the act of August 9, 1912 (37 Stat., 265), a lien is reserved in favor of the United States in the amount of the total obligation described in paragraph 4, against all of the said land, both irrigable and nonirrigable, together with its privileges and appurtenances, including all water rights.

6. *Rights of way.*—As a further consideration for said water right, the Applicant hereby grants, sells, and conveys to the United States, without claim for compensation on account thereof, the following rights of way:

(a) A right of access to and control over all ditches, gates, and other structures for the delivery of water to said land, now or hereafter placed upon said land.

(b) Rights of way and the right to locate same over and across said land for all irrigation, drainage, and power ditches, canals, flumes, and pipes, and for telegraph, telephone, and electric transmission lines and other structures, now or hereafter necessary, in the opinion of the Secretary of the Interior, for the proper construction and operation and maintenance of said project. Said land is subject to the right-of-way act of August 30, 1890 (26 Stat., 391).

7. *Waste and seepage water.*—The United States reserves the right to collect for use on said propject all waste and seepage water coming from said land. The Applicant releases the United States, its officers, agents, and employees from every claim for damage, direct or indirect, arising by reason of the presence of waste or seepage water on said land.

8. *Land transferred for other than agricultural purposes.*—Should the irrigable area of said land or any por-

tion thereof be transferred for a railroad, manufacturing, or other nonagricultural purpose, then all of the charges described in paragraph 4 assessed against the area so transferred shall at once become due and payable, anything hereinbefore to the contrary notwithstanding, and upon payment thereof such area shall be eliminated from the irrigable area of the project and shall not thereafter be subject to the payment of operation and maintenance charges.

9. *Remedies under application not exclusive.*—Nothing in this application contained shall be construed as in any manner abridging, limiting, or depriving the United States of any means of enforcing any remedy at law or in equity for the breach of any of the provisions of this application which it would otherwise have.

10. *Conditions of application to be continuing.*—When used herein, the terms "Secretary of the Interior" and "Project Manager" shall be construed to include the respective successors of those officials, the term "United States" shall be construed to include its successors and assigns, and the term "Applicant" shall be construed to include the Applicant's heirs, executors, administrators, and assigns. All of the within terms and conditions, in so far as they relate to said land, shall be a charge upon said land to run with the title to same.

In Witness Whereof, the Applicant has hereunto set his hand and seal on the date first above written.

.....[Seal.]

.....

(Post-office address of Applicant.)

Affidavit by Applicant.

State of.....County of....., ss.

The undersigned Applicant being first duly sworn, says: *(a)* I am the person who subscribed the foregoing application; *(b)* my post-office address is as stated above under behalf and not at the instance or for the benefit, directly or indirectly, of any other person or any firm, association,

my signature; *(c)* the said application is made in my own or corporation; *(d)* no other application, now uncanceled, has been made for a water right under the reclamation law, appurtenant to land now owned or claimed by me, except Application No....., ...
.....Project, made by.....
for.....Sec....., Township.....
Range....., ...Meridian, covering an area of.....acres and containing.....acres of irrigable land, as determined by the Secretary of the Interior.

.....
(Name of Applicant.)

Subscribed and sworn to before me.....

.....
(Officer qualified to administer oath.)

My commission expires.....

.....
(Title.)

Approval by Water Users' Association.

Certified this.....day of....., 192...., that the Applicant executing this instrument has subscribed (or is the successor in interest to one who has subscribed) for the stock of this association for the lands described therein.

.....
Sec'y.....Water Users' Assn.

Approval by the United States.

Approved and accepted this.....day of.....
192....., by authority of the Secretary of the Interior.

.....
Project Manager,
U. S. R. S.

Instructions.

[1]If any special act is applicable, insert reference.

[2]If public notice has issued, insert number and date of same and amount of construction charge; if not insert: "(No public notice yet issued.)"

UNITED STATES EXHIBIT 47.

Filed Mar. 5, 1913. Project Serial No. 898.

Department of the Interior.

Water-Right Application.

Act June 17, 1902 (32 Stat., 388).

North Platte Project.

U. S. Land Office, Alliance, Nebraska. Serial No. 08298.

North Platte Valley Water Users Association No. 2244.

Lands in Private Ownership.

March 1, 1913.

George Baltes and Fannie Baltes his wife, hereinafter called the applicant, hereby applies for a water right under the Inter-S. Unit, North Platte Project, subject to the provisions of the Act of Congress approved June 17, 1902 (32 Stat., 388), known as the Reclamation Act, and the rules and regulations established thereunder, the water supplied in pursuance thereof to be used for the irrigation of, and to be appurtenant to, 159 acres of irrigable land, as shown on plats approved by the Secretary of the Interior, within the area described as follows: NE¼, Section 20, Township 23 N., Range 55 West 6th P., ... Meridian, an area of 160 acres.

The quantity of water to be furnished hereunder shall be 2¼ acre-feet of water per annum per acre of irrigable land, as aforesaid, measured at the land; .....

.....

..... or so much thereof as shall constitute the proportionate share per acre from the water supply actually available for the lands under said project; Provided, That the supply furnished shall be limited to the amount of water beneficially used on said irrigable land: Provided, however, that if measuring devices are not installed at the land, an increase deemed reasonable by the Reclamation Service official in charge of the project shall be made for losses of water after passing the point of measurement.

United States Exhibit 47

The applicant hereby agrees on behalf of himself, his heirs, administrators, and assigns to pay for said water right the estimated cost of construction as fixed by the Secretary of the Interior, namely, the sum of $55.00 per acre for 159 acres of irrigable land, ...

.....

.....

.....

.....in not more than ten annual installments, and to pay promptly when due the annual installments and the operation and maintenance charges duly assessed against said land on account of said water right, each and all of which installments and operation and maintenance charges are hereby made and shall be a lien against the above-described premises, such liens attaching immediately upon the execution hereof and being enforcible as to each and every installment, or charge, or portion thereof at such time as the same shall become due in pursuance of public notice issued by the Secretary of the Interior.

It is further agreed and provided that such lien or liens shall have the full force and effect of a mortgage or deed of trust and vest in the United States all the rights and powers which might be exercised and all benefits which might be claimed by the mortgagee in a real estate mortgage given to secure the payment of a loan or debt, including the right of foreclosure by or on behalf of the United States in any court of competent jurisdiction and the applicant grants to the United States or its transferee all the rights, powers, and authority in and over the above-described premises which might be exercised by the trustee named in a deed of trust given to secure the payment of a loan or debt.

The applicant further agrees and binds himself, his heirs, administrators, and assigns to pay all taxes and other liens and encumbrances which are now or may hereafter (during the life of the lien herein given to the United States) become a superior lien or encumbrance to that of the United States, and if the applicant, his admin-

istrators, executors, heirs, or assigns fail to pay any such tax, lien, or encumbrance when due, the United States may pay the same and add the amount thereof to the lien held by the United States under this agreement and recover the same.

It is further agreed that upon failure of the applicant to comply with the terms of said Reclamation Act and the regulations thereunder, this application shall be subject to cancellation by the Secretary of the Interior, with the forfeiture of all rights acquired thereunder and of all payments made thereon.

This application must bear the certificate, as hereto attached, of the water users' association under this project, which has entered into this contract with the Secretary of the Interior, and the liens which the United States holds against the above-described land for the payment of the building and operation and maintenance charges, may be enforced, at the option of the United States, either directly by the United States or through the medium of the water users' association.

If the Secretary of the Interior has made no contract with a water users' association under this project, the applicant agrees to file, upon his direction, evidence of membership in the water users' association organized under the said project; in default of which, this application shall be subject to cancellation by the Secretary of the Interior, with the forfeiture of all rights acquired thereunder and of all payments made thereon.

And, being duly sworn, the applicant further deposes and says that the post-office address of the undersigned is Scottsbluff, Nebraska; residing in the neighborhood, namely, upon Section 14, Township 22 N., Range 55 West 6th P., ... Meridian, a distance in a direct line of 7 miles therefrom); that the undersigned holds the following interest in the said tract: Absolute title in fee simple as duly shown upon the records of Scotts Bluff County, Nebraska; that no other application, now uncanceled, has been made for a water right under said Act

of Congress, appurtenant to land now owned or claimed by the undersigned, except as follows:

Application No. ....., ... Project, ..., of ..... for ...., Section ....., Township ....., Range ....., ... Meridian, an area of ..... acres and containing ..... acres of irrigable land, as determined by the Secretary of the Interior; and that the present application is made in behalf of the undersigned and not at the instance or for the benefit of any other person or any association or corporation, either directly or indirectly. No Member of or Delegate to Congress, or Resident Commissioner, after his election or appointment or either before or after he has qualified and during his continuance in office, and no officer, agent, or employee of the Government shall be admitted to any share or part of this contract or agreement, or to any benefit to arise thereupon. Nothing, however, herein contained shall be construed to extend to any incorporated company, where such contract or agreement is made for the general benefit of such incorporation or company, as provided in Section 116 of the Act of Congress approved March 4, 1909 (35 Stat., 1109).

It is further understood and agreed that if the interest of the applicant in said land shall cease and said interest shall be held by a party who is not qualified to apply for or hold a water right under the provisions of the Reclamation Act, this application shall be subject to cancellation by the Secretary of the Interior, with the forfeiture of all rights acquired thereunder and of all payments made thereon.

It is further understood and agreed that the evidence of ownership of this water right shall not be issued by the United States unless fee simple title to said land is vested in the applicant, or in a qualified assignee hereof, whose aggregate water rights under the said Reclamation Act shall not exceed one hundred and sixty acres, or the maximum limit of area fixed by the Secretary of the Interior, at the time when final payment hereon is due,

in default of which this application shall be subject to cancellation by the Secretary of the Interior, with the forfeiture of all rights thereunder and of all moneys paid thereon.

GEORGE BALTES,
FANNIE BALTES,
Applicant.

In the presence of
B. J. SEGER,
Witness.

Acknowledgment.

State of Nebraska, Scotts Bluff County, ss.

On the 1st day of March, 1913, before me the undersigned B. J. Seger, a Notary Public, in and for said County personally came George Baltes and Fanny Baltes, husband and wife to me known to be the identical persons whose names are affixed to and who executed the foregoing instrument as grantors and acknowledged the same to be their voluntary act and deed for the purposes therein set forth.

Witness my hand and Notarial Seal the day and year last above written.

B. J. SEGER,
Notary Public.

The above application must be signed and sealed in duplicate, acknowledged before a duly authorized officer in the manner provided by local law and duly recorded in the records of the county in which the lands are situated.

Filed in the United States Reclamation Service Office at Mitchell, Nebraska, and accepted March 5, 1913, on behalf of the United States.

ANDREW WEISS,
(Seal) Project Engineer.

If the Secretary of the Interior has entered into a contract with a water users' association under the project, the following certificate must be filled out:

United States Exhibit 47

Mar. 1, 1913, Scottsbluff, Neb.

I Hereby Certify that the applicant for this water right has duly subscribed (or is the successor in interest of one who has subscribed) for the stock of this association for the lands described herein, and that all assessments levied against said stock by said association have been fully paid up to date.

B. J. SEGER,
Secretary North Platte Valley Water Users' Association.

(Corporate Seal)

Oath of Disinterestedness.

(Section 3745, U. S. Revised Statutes.)

I do solemnly swear that the copy of contract hereunto annexed is an exact copy of contract made by me personally with .....
.....
that I made the same fairly, without any benefit or advantage to myself, or allowing any such benefit or advantage corruptly to the said .....
.....
or any other person; and that the papers accompanying include all those relating to the said contract, as required by the statute in such case made and provided.

.....
.....
.....

Sworn to and subscribed before me at .....
..... this ..... day of ....., 191

.....
Notary Public.

Recorded this 7 day of March, 1913, in Volume 4, Page 95, Miscellaneous Records of Scotts Bluff County, State of Nebraska.

J. H. FERGUSON,
Co. Clerk.

United States Exhibit 47

UNITED STATES EXHIBIT 48.

Department of the Interior.

WATER-RIGHT APPLICATION FOR LANDS IN PRIVATE OWNERSHIP

and Lands Other Than Homesteads Under the Reclamation Act.

Act June 17, 1902 (32 Stat., 388);

and Acts Amendatory Thereof and Supplementary Thereto..... Project. Serial No.....
State of..... .....Unit
.....
(Date)

1. I,....., in pursuance of the provisions of the Reclamation Act approved June 17, 1902 (32 Stat., 388), and acts amendatory thereof, and supplementary thereto, especially the act approved August 9, 1912 (37 Stat., 265) and the act approved August 13, 1914 (Public No. 170) known as the Reclamation Extension Act, all hereinafter called the Reclamation Law, and the rules and regulations established thereunder, do hereby apply on behalf of myself, my heirs, executors, administrators and assigns, for a water right for the irrigation of and to be appurtenant to.....acres of irrigable land as shown on plats approved by the Secretary of the Interior within the tract described as follows:

.....
.....
..... Section.....
Township..... Range.....
.....Meridian, containing a total of
.....acres.

2. The measure of the water right for said land is that quantity of water which shall be beneficially used for the irrigation thereof, but in no case exceeding the share proportionate to irrigable acreage, of the water supply actually available as determined by the Project Manager or other proper officer of the United States, or of its suc-

cessors in the control of the project, during the irrigation season for the irrigation of lands under said unit. If measuring devices are not installed at the land, the amount of water delivered shall be determined by the Reclamation Service official in charge of the project a reasonable allowance being made for losses of water after passing the point of measurement.

3. I agree: *(a)* to pay the annual installments of the construction charge fixed by the Secretary of the Interior in public notice issued in connection with the unit above described on.....day of....., 19....., at $.....per acre of irrigable land, and in addition thereto the annual charges for operation and maintenance as prescribed by the Reclamation Extension Act; and all penalties which may accrue for failure to make payments at the proper time; *(b)* that the construction charge, and each and all of said annual charges for operation and maintenance with accrued penalties, shall be and the same are hereby made a lien upon the tract of land above described and all water rights now or hereafter appurtenant or belonging thereto and all improvements now existing or hereafter made thereon; promising, covenanting, and agreeing to pay all taxes and other claims now or hereafter becoming a prior encumbrance, failing which, upon demand by any proper officer of the United States, or its successors in control of said project, the United States or its said successors may pay the same and add the amount thereof to the lien hereby created and recover the amount so paid as part of the said lien.

4. Upon failure to comply with the terms of the Reclamation Law, and the regulations thereunder, this application may, in the discretion of the Secretary of the Interior, be canceled by him with the forfeiture of all rights under the Reclamation Law and of all moneys theretofore paid hereon: Excepting, however, from the force and effect of this paragraph any and every failure to make payments which shall become due and payable after the issuance of final certificate for the water right hereby sought under the Reclamation Law, a remedy for

the failure thus excepted having been provided by said Law.

5. This application must bear the certificate, as hereto attached, of the water users' association under said project, which has entered into contract with the Secretary of the Interior, and the liens which the United States holds against the above-described land for the payment of the construction, and the operation and maintenance charges, may be enforced, at the option of the United States, either directly by the United States or, where any such lien was given directly to the water users' association for the benefit of the United States, may be enforced through the medium of the water users' association; but the election of one remedy shall not preclude the United States from following the other. If the Secretary of the Interior has made no contract with a water users' association under said project, the applicant agrees to file, upon his direction, evidence of membership in the water users' association organized under the said project, in default of which this application shall be subject to cancellation by the Secretary of the Interior, with the forfeiture of all rights acquired thereunder and of all payments made thereon.

6. I further agree that the United States and its successors in charge of the said Unit shall have full control over all ditches, gates, and other structures owned or controlled by the applicant or his successors in interest and which are required to deliver water hereunder, and proper officers and employees of the United States and its successors shall have at all times the right of access to the above-described premises whenever it is, in the judgment of the officer or employee in charge of said Unit, necessary for them in the discharge of their duties of distributing water to exercise said control. And I do hereby give, grant, bargain, sell, and convey to the United States and its said successors the right for any such proper officer or employee to go and come upon any and all lands now or hereafter owned or held by me or them for said purpose and there exercise said control.

United States Exhibit 48

7. It is understood and agreed that the United States reserves the right upon my failure or the failure of my successors in interest to keep and perform any of the provisions in this instrument contained, by me and my successors in interest undertaken to be kept and performed, to refuse to deliver water to said lands or to stop the delivery of water thereto if water is being delivered, and such refusal to deliver or stoppage of delivery of water shall not operate to cancel this application but shall be considered as an additional remedy to the United States to any remedies existing by reason of the provisions of this application or otherwise.

8. And I do hereby grant, bargain, sell, convey, and confirm to the United States of America and its successors in charge of the project, all rights of way for ditches, canals, flumes, pipe lines, telegraph and telephone transmission lines, or other structures, now constructed by or under the authority of the United States for or in connection with the said project, and all rights of way that may be or become necessary and suitable, and that may be required for the prosecution and operation of the said project, and for the construction, maintenance, and operation of ditches, canals, flumes, pipe lines, telegraph and telephone transmission lines, or other structures that may be constructed by or under authority of the United States and its successors in charge of the project for and in connection with said project, to have and hold the same, together with all the tenements, hereditaments, privileges, and appurtenances thereunto belonging or in anywise appertaining to the United States of America and its assigns and successors in charge of the project forever, subject notwithstanding to the conditions upon which this application is made.

9. No member of or Delegate to Congress, or Resident Commissioner, after his election or appointment or either before or after he has qualified and during his continuance in office, shall be admitted to any share or part of this contract or agreement, or to any benefit to arise thereupon. Nothing, however, herein contained shall be construed to

extend to any incorporated company, where such contract or agreement is made for the general benefit of such corporation or company, as provided in Section 116 of the Act of Congress approved March 4, 1909 (35 Stat., 1109).

10. And I, the said....., being duly sworn, depose and say that my post-office address is .....; that I am a bona fide resident upon said land (or occupant thereof, residing in the neighborhood, namely, upon Section....., Township....., Range,..... .....Meridian, a distance in a direct line of..... miles therefrom); that I hold the following interest in the said tract:..... as duly shown upon the records of..... County, ..., in volume (liber)..... at page (folio).....; that no other application, now uncancelled, has been made for a water right under the Reclamation Law, appurtenant to land now owned or claimed by me, except as follows:

Application No....., ...Project, of..... for..... Section....., Township....., Range....., ... Meridian, an area of.....acres and containing..... acres of irrigable land, as determined by the Secretary of the Interior; and that the present application is made in my own behalf and not at the instance or for the benefit of any other person or any association or corporation, either directly or indirectly.

11. Nothing in this application contained shall be construed as in any manner or at all abridging, limiting, or depriving the United States of any means of enforcing any remedy in law or equity for the breach of any of the provisions of this application which it would otherwise have.

In Witness Whereof, I, ...

United States Exhibit 48

have hereunto set my hand and seal this.....
day of....., 191.....

.....[Seal]

.....[Seal]

In the presence of:

(Three witnesses must sign here.)

.....

.....

.....

Acknowledgment.

State of.....County of....., ss.

My commission expires.....

.....

Notary Public.

State of.....County of....., ss.

....., being duly sworn, deposes and says that he is the person (or one of the persons) who signed the foregoing instrument; that he has read the same and knows the contents thereof and that all the statements of fact made by him in said instrument are true of his own knowledge except such as are made upon information and belief and as to those he believes them to be true.

.....

Subscribed and sworn to before me this.....day of....., 191.....

.....

Notary Public.

My commission expires.....

....., 191.....

I hereby certify that the applicant signing the above instrument has duly subscribed (or is the successor in interest of one who has subscribed) for stock of this association for the lands described therein, and that all assessments levied against said stock by this association have been fully paid up to date.

.....

Secretary.....Water Users' Association.

United States Exhibit 48

Approved and accepted this.....day of....., 191.., by authority of the Secretary of the Interior.

.....

Project Manager.

United States Exhibit 48

UNITED STATES EXHIBIT 49.

.....
(Stamp date of receipt)

.....
(Number)

Department of the Interior.

United States Reclamation Service.

.....Irrigation Project.

Application for Permanent Water Right.
(For all lands except entries under the reclamation law.)

.....
(Date)

1. In Pursuance of the provisions of the act of June 17, 1902 (32 Stat., 388), and acts amendatory thereof or supplementary thereto, especially the act of August 9, 1912 (37 Stat., 265), and the act of August 13, 1914 (38 Stat., 686), all herein styled the reclamation law, and the rules and regulations established under said law,[1].....
.....
and subject to the conditions named in this instrument, application is hereby made to The United States of America, herein styled United States, by the Undersigned, herein styled Applicant, for a permanent water right for the irrigation of and to be appurtenant to all of the irrigable area now or hereafter developed under the above-named project within the tract of land described in paragraph 2, as now or hereafter determined by the Secretary of the Interior.

2. *Description of land.*—The land on account of which a water right is desired, contains a total of ..... acres, of which ..... acres are now classed as irrigable, and is more particularly described as follows:

.....
.....
.....
..... Section ....., Township .....,
Range ....., ... M.

3. *Description of water right.*—The quantity of water

to be furnished hereunder shall be that quantity which may be applied beneficially in accordance with good usage in the irrigation of the land described in paragraph 2: *Provided,* That in case of a shortage at any time the amount to be furnished shall be an equitable proportionate share, as nearly as practical operations will permit, of the water actually available at the time for all of the area being watered from the same source of supply, such proportionate share to be determined by the project manager. A plan of rotation shall be followed wherever, in the opinion of the project manager, it is practicable. If a measuring device is not installed at the point of delivery to the Applicant, the amount of water delivered shall be determined by the estimate of the project manager. In distributing and apportioning the water the project manager may take into consideration the character and necessities of the land. On account of drought, inaccuracy in distribution, or other cause, there may occur at times a shortage in the water supply, and while the United States will use all reasonable means to guard against such shortages, in no event shall any liability accrue against the United States, its officers, agents, or employees, for any damage direct or indirect arising therefrom.

4. *Agreement to pay water charges.*—The Applicant hereby agrees to pay to the United States the charges now and hereafter properly assessable against said land on account of said water right, together with any penalties for delinquency that may accrue, as provided by law and by the regulations, orders, and public notices now or hereafter promulgated by the Secretary of the Interior thereunder, such payment to be made in the manner, at the times, and subject to the conditions provided by said law, regulations, orders, and public notices, which charges are as follows: *(a)* An annual operation and maintenance charge for operating and maintaining the irrigation system, and *(b)* a construction charge to return the cost to the system. These charges are assessable against each acre of said land now and hereafter found irrigable by the Secretary of the Interior. Said land is now subject to public notice described as follows:[2] .....

5. *Lien to secure payment of water charges.*—For the purpose of securing payment to the United States of the obligations, and each of them, described in paragraph 4, according to the conditions therein stated, a lien in favor of the United States in the amount of the total obligation described in paragraph 4, is hereby created and made a charge upon all of the said land, both irrigable and non-irrigable, together with its privileges and appurtenances, including all water rights. Upon the failure of Applicant to pay when due any installment of charges described in paragraph 4, the United States is empowered to foreclose the lien hereby created and sell said land to satisfy the obligation due the United States.

6. *Rights of way.*—As a further consideration for said water right, the Applicant hereby grants, sells, and conveys to the United States, without claim for compensation on account thereof, the following rights of way:

(a) A right of access to and control over all ditches, gates, and other structures for the delivery of water to said land, now or hereafter placed upon said land.

(b) Rights of way and the right to locate same over and across said land for all irrigation, drainage, and power ditches, canals, flumes, and pipes, and for telegraph, telephone, and electric transmission lines and other structures, now or hereafter necessary, in the opinion of the Secretary of the Interior, for the proper construction and operation and maintenance of said project. If said land was taken up under any of the public land laws subsequent to October 2, 1888, it is subject to the right-of-way act of August 30, 1890 (26 Stat., 391).

7. *Waste and seepage water.*—The United States reserves the right to collect for use on said project all waste and seepage water coming from said land. The Applicant releases the United States, its officers, agents and employees from every claim for damage, direct or indirect, arising by reason of the presence of waste or seepage water on said land.

8. *Land transferred for other than agricultural purposes.*—Should the irrigable area of said land or any portion thereof be transferred for a railroad, manufacturing, or other nonagricultural purpose, then all of the charges described in paragraph 4 assessed against the area so transferred shall at once become due and payable, anything hereinbefore to the contrary notwithstanding, and upon payment thereof such area shall be eliminated from the irrigable area of the project and shall not thereafter be subject to the payment of operation and maintenance charges.

9. *Remedies under application not exclusive.*—Nothing in this application contained shall be construed as in any manner abridging, limiting or depriving the United States of any means of enforcing any remedy at law or in equity for the breach of any of the provisions of this application which it would otherwise have.

10. *Conditions of application to be continuing.*—When used herein, the terms "Secretary of the Interior" and "Project Manager" shall be construed to include the respective successors of those officials, the terms "United States" shall be construed to include its successors and assigns, and the term "Applicant" shall be construed to include the one or more persons executing this application, and their respective heirs, executors, administrators, and assigns. All of the within terms and conditions, in so far as they relate to said land, are, and each of them hereby is, made a charge upon said land to run with the title to same.

11. *Member of Congress clause.*—No Member or Delegate to Congress, or Resident Commissioner, after his election or appointment, or either before or after he has qualified and during his continuance in office, and no officer, agent, or employee of the Government, shall be admitted to any share or part of this contract or agreement, or to any benefit to arise thereupon. Nothing, however, herein contained shall be construed to extend to any incorporated company, where such contract or agreement

is made for the general benefit of such incorporation or company, as provided in section 116 of the act of Congress approved March 4, 1909 (35 Stat., 1109).

In Witness Whereof, the Applicant[3] has hereunto set his hand and seal on the date first above written.

In the presence of—

.....

.....

.....

(Three witnesses must sign here.

.....(Seal)

.....(Seal)

(Post-office address of Applicant.)

.....

(Bona fide residence of Applicant.)

Sec....., Twp....., Range.....

Acknowledgment by Applicant.[4]

Affidavit by Applicant.[5]

State of .....
County of ..... } ss:

The undersigned Applicant being first duly sworn, says: *(a)* I am the person who subscribed the foregoing application; *(b)* my post-office address is as stated above under my signature; *(c)* the said application is made in my own behalf and not at the instance or for the benefit, directly or indirectly, of any other person or any firm, association, or corporation; *(d)* no other application, now uncanceled, has been made for a water right under the reclamation law, appurtenant to land now owned or claimed by me, except Application No. ....., ... Project, made by ..... for ..... Sec. ....., Township ....., Range ....., ... Meridian, covering an area of ..... acres and containing ..... acres of irrigable land, as determined by the Secretary of the Interior; *(e)* I am ..... married; *(f)* I occupy the land described in the foregoing application and my actual bona fide place of residence is as stated above under my post-office address, and its

distance from said land in a direct line does not exceed fifty miles; *(g)* my interest in said land is .....,
as shown by an instrument recorded in the records of
..... County, State of .....,
in volume ..... of deeds, at page .....

.....

.....

(Name of Applicant.)

Subscribed and sworn to before me.....

....

(Officer qualified to administer oath.)

.....

(Title.)

My commission expires .....

Approval by Water Users Association.

Certified this ..... day of ....., 19....., that the Applicant executing this instrument has subscribed (or is the successor in interest to one who has subscribed) for the stock of this association for the lands described therein.

.....

Sec'y ..... Water Users' Assn.

Approval by the United States.

Approved and accepted this ..... day of .....,
19....., by authority of the Secretary of the Interior.

.....

Project Manager, U. S. R. S.

Affidavit of Disinterestedness.[6]

State of .....
County of ..... } ss:

I do solemnly swear (or affirm) that the copy of contract hereto annexed is an exact copy of a contract made by me, personally, with .....;
that I made the same fairly without any benefit or advantage to myself, or allowing any such benefit or advantage corruptly to the said ..... or to any other person or persons; and that the papers accom-

panying include all those relating to the said contract, as required by the statute in such case made and provided.

.....

....., U. S. R. S.

Subscribed and sworn to before me .....

.....

(Officer qualified to administer oath.)

.....

(Title.)

My commission expires .....

Instructions.

[1]If any special act is applicable, insert reference.

[2]If public notice has issued, insert number and date of same and amount of construction charge; if not, insert: "(No public notice yet issued)."

[3]Each person having an interest in the title to the land should sign the application. If an applicant is married, the spouse should also sign.

[4]Each person signing the application should acknowledge same according to the law of the State in which executed.

[5]Each person signing the application should execute this affidavit.

[6]Execute this affidavit only on the copy for the Returns Office, not on original.

United States Exhibit 49

UNITED STATES EXHIBIT 72.

STATEMENT SHOWING BALANCES OF CONSTRUCTION CHARGES REPAYABLE OF SEPTEMBER 30, 1939, NORTH PLATTE PROJECT.

Name of Water User	Balance Repayable
Pathfinder Irrigation District	$6,364,451.35
Gering & Fort Laramie Irrigation District	4,693,078.78
Goshen Irrigation District	4,541,139.77
Northport Irrigation District	1,008,458.42
Farmers Irrigation District	240,960.00
Warren Act Contracts	
Lingle Water Users Association	.02
Hill Irrigation District	2,723.64
Brown Creek Irrigation District	2,910.64
Bridgeport Irrigation District	54,334.00
Individual Accounts—Nebraska Lands.	
J. S. Mekiney — F.U. "A" Sec. 30-23-55	288.19
E. D. James — F.U. "G" Sec. 34-23-54	44.61
H. E. James — SE¼SE¼ & S½NE¼SE¼ Sec. 28 and NE¼NE¼ & SE¼NE¼ Sec. 33-23-54	165.99
A. Martin — F.U. "F" Sec. 8 & 17-24-57	935.89
M. A. Schneider — F.U. "A" Sec. 35-24-57	503.28
Mrs. H. A. Poitevin — F.U. "G" Sec. 11-23-57	299.31
B. Webster — F.U. "E" S½SE¼ Sec. 26-24-58	5,822.00
Great Western Sugar Co. — Mitchell Scottsbluff Dump Sites Pt. F.U. "E", Sec. 22-23-55	375.21

United States Exhibit 72

Individual Accounts—Wyoming Lands.

Name of Water User		Balance Repayable
R. A. Bissell	NW¼NE¼ Sec. 27-24-60	$2,153.50
H. E. Keller	F.U. "E" Sec. 3-24-60	5,523.97
C. Jacobson	F.U. "A" Sec. 34-25-60	6,259.25
Mrs. E. Mittlestadt	F.U. "A" Sec. 34-24-60	2,825.41
R. B. Dorsey	F.U. "C" Sec. 34-24-60	5,555.47
R. C. Parsley	F.U. "G" Sec. 27, 28 & 34-24-60	5,216.48
P. J. Reynolds	W½SW¼ Sec. 24-26-62	140.34
J. H. Lake, Adm.	F.U. "B" Sec. 27-24-60	2,567.28
M. D. Osterhout	F.U. "B" Sec. 3-24-60 and Sec. 34-25-60	6,035.00
E. C. Bissell	F.U. "D" Sec. 27-24-60	5,749.47
W. B. Dickson	SE¼SW¼ and NE¼SW¼ Sec. 27-24-60	4,056.93
B. O. Bissell	SW¼SE¼ Sec. 27-24-60	2,028.58
C. A. Nash	F.U. "C" Sec. 3-24-60	6,872.20
M. D. Osterhout	F.U. "A" Sec. 3-24-60	4,337.41
J. W. Spurgin	F.U. "A" Sec. 4-24-60 and Sec. 33-25-60	8,250.82
L. G. Bashford	F.U. "B" Sec. 4-24-60	6,403.07
J. M. Keller	F.U. "F" Sec. 3-24-60	4,273.32
M. L. Harris	F.U. "G" Sec. 3 & 10-24-60	7,667.54
H. C. Karpt	F.U. "E" Sec. 22-24-60	6,142.41
H. J. Walsh	F.U. "A" Sec. 15 & 22-25-60	8,002.02
C. F. Harris	F.U. "D" Sec. 3-24-60	6,057.48
L. Zarorka	F.U. "A" Sec. 10-24-60	7,545.11
R. V. Schneider	F.U. "A" Sec. 21-25-62	1,901.12
G. H. Glover	F.U. "A" Sec. 19-25-61	1,655.58
E. Hahcsy	F.U. "G" Sec. 22-24-60	3,337.88
F. Coy	F.U. "D" Sec. 32-25-60 and Sec. 4 & 5-24-60	7,757.36
A. Kressl	F. U. "C" Sec. 9-24-60	5,603.86
D. Greenwald	NE¼NE¼ Sec. 20-25-62	105.69
A. Kressl	F.U. "D" Sec. 9, 10 & 15-24-60	3,266.00
J. Franz	F.U. "B" Sec. 8-24-60	4,371.46
J. Johnston	F.U. "A" Sec. 27 & 34-25-62	3,857.61
L. Skeen	F.U. "B" Sec. 9-24-60	3,306.46

United States Exhibit 72

Acreage Irrigated by Federal Projects (Primary or Full Supply) Actually in Operation, 1929 and 1939, in the 17 Western States.

	Area Irrigated, In Acres						
	Bureau of Reclamation[1]		Indian Office[2]		Total Federal		
	1929	1939	1929	1939	1929	1939	Gain
Ariz.	278,584	265,042	13,555	84,183	292,139	349,225	57,086
Calif.	31,998	44,581	2,908	4,106	34,906	48,678	13,774
Colo.	81,883	83,137	4,813	6,875	86,696	90,012	3,316
Idaho	275,954	344,638	34,991	34,965	310,945	379,603	68,658
Kansas	—	—	—	—	—	—	—
Montana	98,327	186,002	75,844	125,021	174,171	311,023	136,852
Nebraska	147,026	160,799	—	—	147,026	160,799	13,773
Nevada	54,040	57,471	6,148	17,607	60,188	75,078	12,890
New Mex.	103,110	98,064	20,824	26,513	123,934	124,577	643
Nor. Dak.	6,089	14,131	—	147	6,089	14,278	8,189
Okla.	—	—	—	334	—	—	—
Oreg.	61,829	130,403	4,135	5,168	65,964	135,571	69,607
So. Dak.	36,193	34,222	—	815	36,193	35,037	—1,156
Texas	65,442	61,153	—	—	65,442	61,153	—4,289
Utah	40,000	38,623	54,619	58,594	94,619	97,217	2,598
Wash.	118,667	167,085	92,367	118,637	211,034	285,722	74,688
Wyoming	85,886	138,653	21,636	23,681	107,522	162,334	54,812
Total	1,485,028	1,824,004	331,840	506,646	1,816,868	2,330,650	513,782

Bureau of Reclamation—Gain 338,976 acres

Indian Office—Gain 174,806 acres

[1]Includes acreage served with full supply.
[2]Full supply.
Source: U. S. Census of Irrigation, 1930, and Preliminary Census Tabulation of Irrigation Data, 1940.

United States Exhibit 207B

Department of the Interior
Bureau of Reclamation
compiled by
Information Division
Research Section
C. W. Linneweaver, Chief

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UNITED STATES EXHIBIT 207C.

Table 25.

Areas not in Government Projects But Irrigated With Supplemental Water Supply by Bureau of Reclamation Projects.

State	Irrigated 1929	Irrigated 1939
Arizona	68,010	58,044
California[1]	1,700	1,709
Colorado	15,350	13,074
Idaho	820,570	842,715
Nebraska[1]	91,440	96,602
Nevada	—	11,874
Oregon[1]	33,540	85,042
Texas	60,000	12,681
Utah	7,230	161,455
Washington	124,390	161,876
Wyoming[1]	12,000	15,398
	1,234,230[1]	1,460,470[2]

Net Gain—271,240 acres from 1929 to 1939 exclusive of about 45,000 acres in Mexico reported irrigated in 1929 by the Rio Grande Project but not reported in 1939.

[1]Total reported by Bureau of Reclamation for 1929. Apportionment of interstate projects estimated.

[2]Reported in Preliminary Tabulation, Census of Irrigation, 1940.

United States Exhibit 207C

Irrigated Acreage in 1939 Reported for All Non-Federal (Private) Irrigation Enterprises and for Federal (Bureau of Reclamation and Office of Indian Affairs) Projects in the 17 Western States

State	All Non-Federal[a]	Federal			Total
		Part Supply	Full Supply	Total	
	(Acres)	(Acres)[1]	(Acres)[2]	(Acres)	(Acres)
Arizona	245,537	58,044	349,225	407,269	652,806
California	5,127,254	1,709	48,687	50,396	5,177,650
Colorado	3,117,599	13,074	90,012	103,086	3,220,685
Idaho	1,051,631	842,715	379,603	1,222,318	2,273,949
Kansas	99,980	—	—	—	99,980
Montana	1,385,040	—	311,023	311,023	1,696,063
Nebraska	352,978	96,602	160,799	257,401	610,379
Nevada	745,301	11,874	75,078	86,952	832,253
New Mexico	428,597	—	124,577	124,577	553,174
North Dakota	7,337	—	14,278	14,278	21.615
Oklahoma	3,826	—	334	334	4,160
Oregon	827,463	85,042	135,571	220,613	1,048,076
South Dakota	25,161	—	35,037	35,037	60,198
Texas	966,280	12,681	61,153	73,834	1,040,114
Utah	917,567	161,455	97,217	258,672	1,176,239
Washington	167,516	161,876	285,722	447,598	615,114
Wyoming	1,308,766	15,398	162,334	177,732	1,486,498
Totals	16,777,833	1,460.470	2,330,650	3,791,120	20,568,953

[a]Excludes acreage Bureau of Reclamation provided supplemental water.
[1]Bureau of Reclamation.
[2]Bureau of Reclamation and Office of Indian Affairs.
Source: U. S. Irrigation Census, 1940, Preliminary Tabulation.

Department of the Interior, Bureau of Reclamation. Filed by Information Division, Research Section. G. W. Lineweaver, Chief.

United States Exhibit 208

UNITED STATES EXHIBIT 227
Table EE
Irrigable Acreage Non-Federal[1] and Federal [2]
Irrigation Enterprises will be Capable of
Supplying with Water on Completion of Current Federal Programs[3]
in the 17 Western States

State	All Non-Federal (acres)	Federal			Grand Total (acres)
		Part Supply (acres)	Full Supply (acres)	Total (acres)	
Arizona	565,478	101,543	709,243	810,786	1,376,264
California	4,729,508	3,326,660	843,851	4,170,511	8,900,019
Colorado	3,029,224	1,086,189	214,709	1,300,898	4,330,122
Idaho	1,038,978	1,131,646	548,460	1,680,106	2,719,084
Kansas	147,226	—	—	—	147,226
Montana	1,871,468	—	746,259	746,259	2,617,727
Nebraska	806,462	107,950	193,155	301,105	1,107,567
Nevada	786,900	72,338	142,779	215,117	1,002,017
New Mexico	604,931	—	246,556	246,556	851,487
North Dakota	19,444	—	38,436	38,436	57,880

Oklahoma	12,846	—	70,386	70,386	83,232
Oregon	1,024,206	183,565	228,648	412,213	1,436,419
South Dakota	37,545	12,000	112,274	124,274	161,819
Texas	1,530,025	567,584	74,708	642,292	2,172,317
Utah	1,009,776	301,745	133,138	434,883	1,444,659
Washington	216,083	188,377	1,687,522	1,875,899	2,091,982
Wyoming	1,947,143	36,477	409,553	446,030	2,393,173
Totals	19,377,243	7,116,074	6,399,677	13,515,751	32,892,994

[1]Estimated acreage wholly dependent on Non-Federal enterprises, based on ultimate irrigable areas reported in 1940 preliminary irrigation census tabulation. Excludes supplemental or part supply acreage included in Federal totals. Estimates of private investment required to complete existing private systems, as reported to the Census, total only $20,237,947 to serve 2,455,671 additional acres, or about $8.25 an acre.

[2]Federal acreage includes areas dependent on Bureau of Reclamation projects for full or supplemental supplies, and areas to be served by projects of the Office of Indian Affairs with full supply. Included in the total are duplications of 136,000 acres in Washington State served by Reclamation and Indian projects, and 160,000 acres in Idaho, a part of which is now served by Reclamation works and which will receive an additional supplemental supply from a Reclamation project now under construction.

[3]Source: U. S. Census, 1940; Records of Bureau of Reclamation and Office of Indian Affairs.

Department of the Interior
Bureau of Reclamation
compiled by
Information Division
Research Section
G. W. Lineweaver, Chief

United States Exhibit 227

UNITED STATES EXHIBIT 229.

(The Following Matter Is Tabulated From Map of Individual States.)

U. S. Department of the Interior
Bureau of Reclamation

Irrigable Acreage Private (1) and Federal (2) Irrigation Enterprises Will Be Capable of Supplying With Water in 17 Western States on Completion of Current Federal Programs (3).

November, 1941.

Arizona	
All Private	565,478
Federal	
Full Supply	709,243
Part Supply	101,543
Total Federal	810,786
Grand Total	1,376,264
California	
All Private	4,729,508
Federal	
Full Supply	843,851
Part Supply	3,326,660
Total Federal	4,170,511
Grand Total	8,900,019
Colorado	
All Private	3,029,224
Federal	
Full Supply	214,709
Part Supply	1,086,189
Total Federal	1,300,898
Grand Total	4,330,122

United States Exhibit 229

Idaho	
All Private	1,038,978
Federal	
Full Supply	548,460
Part Supply	1,131,646
Total Federal	1,680,106
Grand Total	2,719,084
Kansas	
All Private	147,226
Grand Total	147,226
Montana	
All Private	1,871,468
Federal	
Full Supply	746,259
Total Federal	746,259
Grand Total	2,617,727
Nebraska	
All Private	806,462
Federal	
Full Supply	193,155
Part Supply	107,950
Total Federal	301,105
Grand Total	1,107,567
Nevada	
All Private	786,900
Federal	
Full Supply	142,779
Part Supply	72,338
Total Federal	215,117
Grand Total	1,002,017

United States Exhibit 229

New Mexico	
All Private	604,931
Federal	
Full Supply	220,184
Total Federal	220,184
Grand Total	851,487

North Dakota	
All Private	19,444
Federal	
Full Supply	38,436
Total Federal	38,436
Grand Total	57,880

Oklahoma	
All Private	12,846
Federal	
Full Supply	70,386
Total Federal	70,386
Grand Total	83,232

Oregon	
All Private	1,024,206
Full Supply	228,648
Total Federal	183,565
Grand Total	1,436,419

South Dakota	
All Private	37,545
Full Supply	112,274
Part Supply	12,000
Total Federal	124,274
Grand Total	161,819

United States Exhibit 229

Texas	
All Private	1,530,025
Federal	
Full Supply	100,494
Part Supply	567,584
Total Federal	668,078
Grand Total	198,103
Utah	
All Private	1,009,776
Federal	
Full Supply	133,138
Part Supply	301,745
Total Federal	434,883
Grand Total	1,444,659
Washington	
All Private	216,083
Federal	
Full Supply	1,687,522
Part Supply	188,377
Total Federal	1,875,899
Grand Total	2,091,982
Wyoming	
All Private	1,947,143
Federal	
Full Supply	409,553
Part Supply	36,477
Total Federal	446,030
Grand Total	2,393,173

United States Exhibit 229

Summary

All Private		
Wholly Dependent		19,377,243
Federal		
Full Supply	6,399,031	
Part Supply	7,116,074	
Total Federal		13,515,165
Grand Total		32,892,408

(1) Estimated acreage wholly dependent on non-federal enterprises, based on ultimate irrigable areas reported in 1940 preliminary irrigation census tabulation. Excludes supplemental or part supply acreage included in federal totals. Estimates of private investment required to complete existing private systems, as reported to the Census, total only $20,237,947 to serve 2,455,671 additional acres, or about $8.25 an acre.

(2) Federal acreage includes areas dependent on Bureau of Reclamation projects for full or supplemental supplies, and areas to be served by projects of the Office of Indian Affairs with full supply. Included in the total are duplications of 136,000 acres in Washington State served by Reclamation and Indian projects, and 160,000 acres in Idaho, a part of which is now served by Reclamation works and which will receive an additional supplemental supply from a Reclamation project now under construction.

(3) Source: U. S. Census, 1940; Records of Bureau of Reclamation and Office of Indian Affairs.

United States Exhibit 229

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UNITED STATES EXHIBIT 23

Table 21

Hydroelectric Plants Operating, Under Construction, or A

State	Project	Plants	Initial Operation	Prese Kilow Capac	Ultimate Kilowatt Capacity	Ultimate No. of Generators and Capacities (kw)
Ariz.	Salt River	Chandler	1919	6	600	1—600
		Roosevelt	1906*	15,4	15,400	1—5,500; 1—3,700 2—1,300; 3—1,200
		Ariz. Falls	1913	8	850	2—425
		Cross Cut	1914	5,1	5,100	1—3,000 3—700
		Stewart Mt.	1930	10,4	10,400	1—10,400
		Horse Mesa	1927	30,0	30,000	3—10,000
		S. Consolidated	1912	1,6	1,600	2—800
		Mormon Flat	1926	7,0	7,000	1—7,000
	Yuma	Siphon Drop	1926	1,6	1,600	2—800
Ariz.-Nev.	Boulder	Boulder	1936	787,3	322,300	15—82,500; 2—40,000 2—2,400
	Davis	Davis (authorized)***			225,000	
Ariz.-Cal.	All-American	Drop 3	1941	5,4	10,800	2—5,400
		Drop 4	1941	9,6	19,200	2—9,600
	Parker	Parker (Under construction)			120,000	—
Calif.	Central Valley	Shasta (Under construction)			375,000	
		Keswick (Under construction)			75,000	
Colo.	Colo.-Big Thompson	Green Mountain (Under construction)			21,600	
		Other (Authorized)			160,000	
	Grand Valley	Grand Valley	1932	3,0	3,000	2—1,500
Idaho	Boise	Boise River	1912	1,8	1,875	3—625
		Black Canyon	1925	8,0	8,000	2—4,000
		Anderson Ranch (Under construction)			30,000	
	Minidoka	Minidoka	1909	8,4	13,400	1—5,000; 1—2,400 5—1,200
Mont.	Ft. Peck	Ft. Peck (Authorized—Transmission only)			50,000	
Nebr.-Wyo.	N. Platte	Guernsey	1927	4,8	4,800	2—2,400
		Lingle	1919	1,4	1,400	2—400 2—300
Nev.	Newlands	Lahontan	1911	1,5	1,500	3—500
New Mex.	Rio Grande	Elephant Butte	1916**	24,3	24,300	3—8,100
Texas	Colo. River	Marshall Ford	1941	45,0	67,500	3—22,500
Utah	Str. Valley	Spanish Fork	1908	1,1	1,150	2—450
	Provo River	Deer Creek (Authorized)			8,600	
Wash.	Col			128,0		

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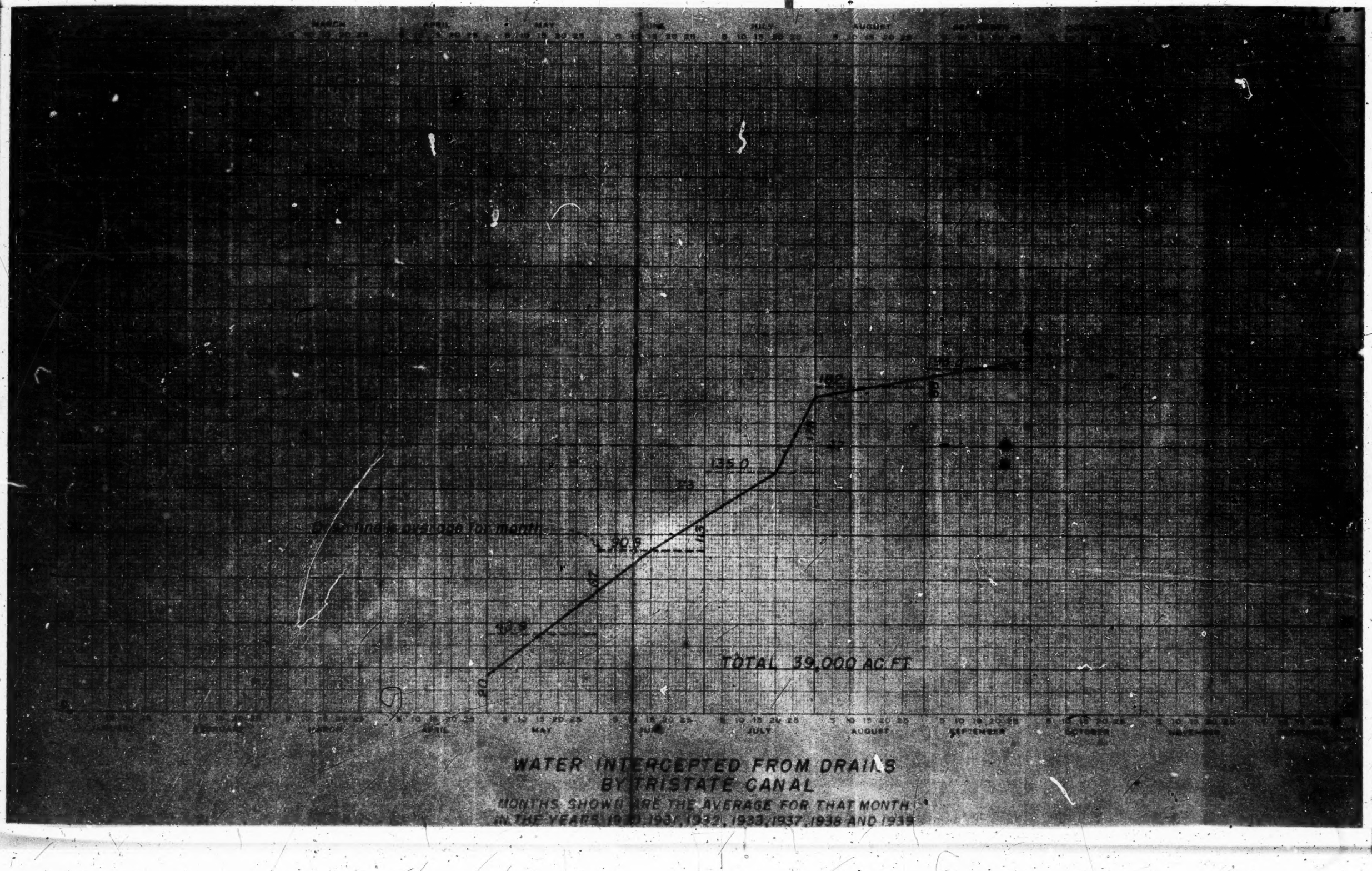

WATER INTERCEPTED FROM DRAINS
BY TRISTATE CANAL

MONTHS SHOWN ARE THE AVERAGE FOR THAT MONTH
IN THE YEARS 1930, 1931, 1932, 1933, 1937, 1938 AND 1939

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	Yakima	Prosser	1932	2,4	74,000	18—108,000
						3—10,000
		Rocky Ford	1917	1	2,400	1—2,400
Wyo.	Kendrick	Seminoe	1939	32,4	187	1—187*
	Riverton	Pilot Butte	1925	1,6	32,400	3—10,800
	Shoshone	Shoshone	1922	5,6	1,600	2—800
					5,600	1—4,000; 2—800
	Plants *in operation* on 17 projects in 11 States			Total present kilowatt capac		,144,462
				Total ultimate kilowatt capac		,567,962
	Plants *under construction* on 4 projects			Total ultimate kilowatt capac		621,600
	Plants *authorized* on 4 projects			Total ultimate kilowatt capac		443,600
				Grand Total Ultimat Kilowatt Capacity		,633,162

*Original plant; present plant 1909.
**Old plant, capacity 150 kw; present plant completed 1940.
***Initial installation 180,000 kw.

Department of the Interior, Bureau of Reclamation, compile Information Division, Research Section. G. W. Lineweaver, Chief.

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UNITED STATES EXHIBIT 273.

North Platte River Water Study
Seminoe to Kingsley Reservoir

Includes Kendrick Project with both units of 66,000 acres
(All water quantities are stated in thousands of acre feet)

Whalen to Tri-State

49
Spill at Guernsey not diverted Same as Col. 39
0
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0
0
0
0
0
9.8
22.2
19.7
32.9
0
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0
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84.6
0
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9.8
22.2
19.7
15.1
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0
0
87.0

North Platte River Water Study
Seminoe to Kingsley Reservoir
Includes Kendrick Project with two units of 66,000 acres
(All water quantities are stated in thousands of acre feet)

Whalen to Tri-State

49
Spill at Guernsey not diverted Same as Col. 39
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233.5
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17.1

United States Exhibit 273

North Platte River Water Study
Seminoe to Kingsley Reservoir
Includes Kendrick Project with two units of 66,000 acres
(All water quantities are stated in thousands of acre feet)

Whalen to Tri-State

49
Spill at Guernsey not diverted Same as Col. 39
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United States Exhibit 273

North Platte River Water Study
Seminoe to Kingsley Reservoir
Includes Kendrick Project with both units of 66,000 acres
(All water quantities are stated in thousands of acre-feet)
Whalen to Tri-State

49

Spill at Guernsey not diverted Same as Col. 39
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25.6

Note G.

Col. 39. "Uncontrollable and Undivertable above Tri-State Dam" is the amount of water passing Guernsey which can not be stored in Guernsey due to Guernsey being full (50,900 acre feet), and which is not required to satisfy any irrigation or storage demand between Guernsey and the Tri-State Dam, including the Tri-State diversion. It may be diverted below the Tri-State Dam or stored in Kingsley Reservoir.

APPENDIX

* * * * *

Q. Will you summarize the present exportation development?

A. The existing enterprises are all located at Cameron Pass. They are the Cameron Pass Ditch and the Michigan Ditch. Together these export water from the headwaters of the North Platte River or from this tributary, the Michigan River, in amounts ranging from 1000 acre feet in deficient seasons to about 8000 acre feet in the best water supply years. The average of such diversions for the period of the record, 1913 to 1939, having been about 4000 acre feet.

I want to state in that connection that our studies show that the ditches as originally constructed and as extended and enlarged during past years, I believe all of those some time ago—at any rate our studies in recent years when daily discharges have been available show that we might anticipate in a mean future a cycle of years, assuming the present diversion capacity to be maintained, not to be enlarged or extended, at approximately 6000 acre feet per season.

The extensions of these ditches as outlined on the two filing maps just discussed, Colorado Exhibit 45 and Colorado Exhibit 46, if those extensions are constructed, our guess or opinion is that they might together increase these ex-

portations by about 6000 acre feet per year, making a total in the future after these extensions are built of about 12,000 acre feet annually of exported or transmountain diversion water.

Q. In your opinion are exportations above the figure of 10,000 acre feet possible?

A. I gave that figure as 12,000. The 10,000 figure that you cited would be the average of past diversions plus the estimated future diversions of the proposed extensions. That figure might be better read 12,000, as the estimated future diversion after the proposed extensions are built, and under normal water supply conditions.

In our opinion, no exportations in excess of that amount are possible except if tunnels be constructed through the mountain ranges, or in lieu thereof extensive pump-lifts shall be involved.

I believe also to attain that figure, and certainly to justify any larger scale developments involving tunnels, that replacement storage reservoirs would be necessary.

Mr. Gobb. Mr. Warren, in connection with Exhibit 46, may I ask the same question that I did about Exhibit 45, as to wether there was any supplemental statement or supplemental filing made in connection with this project which has No. 8956?

Mr. Warren. Would you make the reply to that, Mr. Patterson?

The Witness. I believe you will find that there a number of filings at Cameron Pass involving the side of the mountain range on which the Michigan Ditch is located. However, there were

some of those filings that covered extensions of the original Michigan Ditch that since have ripened into decreed rights, and we did not attempt to put those filings in because those rights were submitted in the water right list. This is the only one that I know of that contemplates extending the Michigan Ditch as now constructed beyond the point of its upper point of diversion. I do not believe there have been any filings submitted since the date of this filing.

Mr. Good. For the sake of the record, I will state that the statute to which I referred is Chapter 147 of the 1919 Session Laws of Colorado. On page 482 of the 1921 Session Laws, an extension of time is given, providing that the supplemental filing can be made up to 1923. The 1919 Act requires that supplemental filing be made within two years, I believe, of the passage of the Act, and in default of which provides a conclusive presumption of abandonment. I do not know where those are to be found in the current 1935 statutes.

Mr. Warren. Without assuming to state what rights claimants might have under the filings represented by Colorado Exhibits Nos. 45 and 46, I will state at this point that there may be, and it will probably show at a later date in this hearing, certain facts with reference to the surrounding circumstances that might have afforded these claimants very good reasons for not having pursued their claims further; that they come under the head of "Defeated projects" to which subject we will return at a later date.

The MASTER. Under the head of what, Mr. Warren?

Mr. WARREN. "Defeated projects."

In order to perfect either of these projects, it was necessary to acquire rights of way upon public lands. Just what the rights of those claimants might be if they would now attempt to complete their projects, I do not think any of at this time are competent to forecast.

The MASTER. No work has actually ever been done on either of those extensions beyond the surveys?

The WITNESS. That is my understanding of it.

The MASTER. Do you know whether any rights of way have been acquired?

The WITNESS. They have attempted to acquire rights of way, but were not allowed to.

The MASTER. All of the rights of way would not be over public lands.

The WITNESS. They are all in the national forests, yes.

The MASTER. Do you know of any present plan in regard to the construction of the extension at any time in the near future?

The WITNESS. The projects are both physically and engineeringly and financially feasible. The principal reason at present is not that these ditches can not now acquire rights of way, although that was one reason why they were not built at the time. They could not at that time get the necessary rights of way. One reason today that they are not being pursued more actively is this lawsuit. If there is a determination and they have a right to export some more water, they

undoubtedly will be built, because there is a great need for additional water in the Poudre Valley. It is quite impossible under the cloud of title created by this ligitation to interest anyone in that financing at the present moment.

* * * * *

Q. Are you familiar with the early history of the Jackson County project?

A. Well, to the extent that I know that in its inception it was conceived as a Carey Act project.

Q. Were some steps taken under the Carey Act in the irrigation of those projects?

A. Yes, the lands proposed to be irrigated were included in what is designated as Colorado Withdrawal List No. 39, under the Act of March 15, 1910. This withdrawal list was filed April 2, 1913, and covered 34,209.34 acres of land, described in the list, all of which was located in Jackson County, and a part of which was the land proposed to be irrigated under this Jackson County project.

Q. What action, if any, did the Department of the Interior, United States Land Office, take upon this application?

A. The Department of the Interior, United States Land Office, under date of June 27, 1913, rejected Colorado's application, and in that letter of rejection cited a letter from the director of the U. S. Reclamation Service, bearing the date of May 31, 1913, giving as reasons for rejection: "It, therefore, appears that the water required for this list would seriously diminish the water supply of the North Platte project, which is supplied through Pathfinder Reservoir, and that it is

doubtful if there would be sufficient water even if the North Platte project was not considered."

Q. Did Mr. Meeker make any reference to this in his report to the Attorney General dated May 23, 1922, which is set forth in Colorado Exhibit 60?

A. Yes, he did. On page 4 he stated: "The company finally became disgusted at the treatment accorded, and abandoned the Carey Act phase."

Q. Do you know whether any construction was undertaken under this project?

A. Yes. There is evidence on the ground of the construction of about 25 miles of ditch and lateral systems.

Q. Do you know how much money has actually been expended on the project?

A. The documents, including the Meeker report of 1922, which I have examined, state that $35,000 or more had been expended.

Q. Do you know whether or not the right of way application of the project as afterwards organized was ever granted?

A. No, I do not.

Q. Have you been able to contact the original applicants?

A. No, I have not. I have tried to, but they are scattered over the country and difficult to contact. I might state, in that connection, that this same project, during the last three years, has been under investigation by the Director or the Commissioner of the Taylor Grazing Act, and at his request I personally made considerable effort to find the people who might have what remaining

rights or claims or interests there are in this Jackson County project. I was not able to contact them, although we did a good deal of work for the Director of the Taylor Grazing Act in the way of field investigations and surveys and furnished a great deal of information about the project to that federal agency.

Mr. STODDARD. May I ask a question?

Mr. WARREN. Yes.

Mr. STODDARD. The Taylor Grazing Act is administered under the Department of the Interior, is it not?

The WITNESS. I am not really sure whether that is an agency under the Department of the Interior or not.

Mr. STODDARD. That is the fact, though.

The WITNESS. I rather believe that that is correct, and I know the individuals, in that connection, having negotiated and worked with them. It was intended by that agency to make a project to demonstrate, on a fairly large scale, the possibility and the advisability of attempting to make their public domain, in charge of the Taylor Grazing Act, more valuable for the purposes of grazing, particularly. This most recent effort in connection with this particular project was intended as a livestock grazing improvement to be constructed with CCC labor, and a CCC camp was installed and some work was done. However, not enough work was done to actually run water through the various ditches. It is my understanding that recently, when the change was made in the head of the Taylor Grazing Division of the Taylor Grazing Act, the project has been

abandoned by that agency and they do not intend to rehabilitate it.

Q. How recently was that CCC camp project initiated, if you know?

A. That was in 1938.

* * * * *

Q. Has the Red Hill Ditch actually been in operation?

A. Yes. It is an old ditch. As far as I know, it has been there a long time. It has recently been enlarged, however; they have put a steam shovel in there and made it a much bigger ditch than it used to be.

Q. Have you seen it in operation?

A. Yes.

Q. When?

A. It was operating last fall.

Q. That was the first time that you had ever seen it in operation, was it not?

A. It was the first time during this period. I don't believe that I ever saw water in that ditch while it was small. Personally, I could not testify to that. But it did run water through in 1939. In 1938, of course, while the steam shovel was working in it, it did not divert any water.

* * * * *

Q. That, in addition to the 1200 acres, would be about 1700 acres of the 131,000 that you listed as irrigated?

A. Yes. I do not want my testimony to be interpreted that that land was never irrigated. All I know about it is that it was irrigated during our three-years' investigation. It was not irrigated the first year. A part of it was the second. All

Transcript pages 22422, 22425, 22523, 22550 — *Patterson—direct, Patterson—cross*

that we have shown was irrigated either continuously through those three years or this 1700 acres that you mention is largely the 1939 portion.

Q. In addition to that 1700 acres, there is perhaps another thousand acres or so closer to Lake Creek that was irrigated before 1938 and 1939?

A. You refer to those lands, now, from Lake Creek east and shown in green, and through which there are certain ditches—Hill Ditch No. 1, Hill Ditch No. 2, and so forth?

Q. Yes.

A. Yes; that, I think, is rather older development.

Q. So that there would be approximately 3000 acres in all that solid green area.

A. Yes, that looks like a fair estimate.

Q. And that is irrigated under the 30 second feet through the Independence Ditch from Lake Creek, and the 36 second feet through the Pleasant Valley Ditch from North Fork, plus what local supply there is in Lake Creek?

A. Yes. It is a little mixed up. You say the 30 second feet under the Independence. I assume you are treating that as the limited capacity of that ditch?

Q. Yes.

A. And the 36 second feet under the Pleasant Valley as its decreed right?

Q. Yes.

A. Yes, that is correct.

Q. Do you know what the capacity of the Pleasant Valley is?

A. I think I have some information here on it. (Referring to papers.) The ditch was being en-

larged—the drag line was working on it—in 1938. Its estimated capacity as enlarged was 132 second feet.

Q. What was it before it was enlarged?

A. I don't know. We didn't have any measurements on it. It was not carrying water in the season of 1938. I don't know what its capacity was then.

Q. Under what right did it carry 132 second feet, when Exhibit 35 shows its right to be 36?

A. That would be up to the Court, to determine what its right would be. The probabilities are, in 1939 or 1938, the additional capacity would be the enlargement priority. But that is pure speculation on my part, as to what the Court might do. I don't know any of the circumstances about it.

Q. Do you know how the Colorado State Department is administering that?

A. I don't exactly get the question, Mr. Good. You mean as to its limit of its diversion?

Q. Yes.

A. No, I don't believe I would like to encroach on the other office, concerning which our department is not in any way authorized to work.

Q. You do not know, then, whether any limitations have been imposed on it by the Colorado State Engineer?

A. No.

Q. Was there a measuring flume in the Pleasant Valley Ditch prior to 1937 or 1938?

A. I don't know that I can answer that definitely. As I stated, it was not in use; the ditch was being enlarged and a steam shovel was in operation in the season of 1938, and the enlarge-

ment was expected to be completed in the fall, and I don't know whether there was a measuring device in that ditch or not.

Q. Do you know whether there is now?

A. No, I don't. I might add to that just this one comment: that we were only concerned about measuring devices where they were a part of our studies and not where the devices might be in any way used as a part of the system of administration.

Q. The additional area above 1700 acres which has just been reclaimed in the last year or so is, of course, a part of the development by which they are enlarging the capacity of the Pleasant Valley Ditch, is it not?

A. It would seem to me that they would not be carrying on this extensive remodeling and enlarging of the irrigation system except that they might be trying to put some additional land under irrigation. Now, as to how effective that may be, whether they have the water or have the rights, I haven't tried to concern myself with that.

Q. It is obvious that under the 30 second feet from the Big Creek area through Independence Ditch and the 36 second feet decreed for the Pleasant Valley, the entire area could not be irrigated; isn't that right?

A. Probably not irrigated as well as the owner would like to irrigate it. I would say that that would be a rather small quantity of water—the two decrees you mention—for adequate irrigation.

Q. It would be so inadequate it would be more

desirable to limit the acreage rather than to try to spread it over the entire acreage?

A. I don't know. I don't know whether I am qualified to answer that or not, because this apparently is based on the judgment of somebody else. What I might do under the same circumstances is probably something that would involve a little more about how they fared in the past.

Q. Is October irrigation the normal practice in North Park?

A. No, it is not normally for existing hay meadows; they don't irrigate the meadows in October.

Q. It is very unusual, is it not—very rare?

A. It is, on the river bottoms; I don't believe there is any that goes on there, but there are some of these pasture lands that they irrigate whenever they can, and I think these diversions last year were made in the fall because there was perhaps a little water that could be diverted as part of the use of a new ditch, and so forth, getting ready for complete operations as far as they could this coming season.

Q. The fact that this suit is pending in Colorado hasn't anything to do with that?

A. I doubt it. There is a great need for some additional pasture in that area, and not only the individuals, such as the owner of this place, but the federal government itself, are carrying on a good deal of work of that kind.

* * * * *

Q. That is largely the new area which you testified has been brought in under the recent construction that has recently been made in that

area from the Pleasant Valley Ditch; is that right?

A. No. That is under the Red Hill Ditch, and the testimony that I gave was that that ditch during 1938 and the early part of 1939 was in process of reconstruction and enlargement as to its capacity, and that the first water that I know of, during our three years of investigation, was used, in this area which I believe we estimated at 1200 acres in the sections that you have named, last fall; but that is under the Red Hill Ditch and not directly under the Pleasant Valley.

* * * * *

Q. And so far as you know, nothing further has been done with reference to that provisional decree since the time it was entered? I mean as to the 96 second feet.

A. Well, I wouldn't want to go quite that far, because there have been quite a lot of supplemental actions. I don't know about any legal actions. I am thinking now of physical efforts on the ground to get that Jackson County project, of which this was a part, into operation. Those activities have been conducted or carried on by individuals, by grazing districts, by our Board at various times, and by the director of the Taylor Grazing Act. Now, I am not representing that they have made any additional filings or statements of claim, or done anything in a legal nature, but there have been repeated efforts to get that project into operation from time to time.

Q. Has anything been done of a physical nature to divert and apply to beneficial use that additional 96 second feet of water?

A. The only work of that kind that I know of personally was the work done in the season of 1938 by the CCC Camp, that did some work of rehabilitating the ditch system under the Jackson County project.

Q. But that didn't go to the extent of diverting water and applying it to the land?

A. I understand not.

* * * * *

Q. You know of no present work being done on any one of those projects?

A. Well, now, that might be just as to one or a few of them. There might be this situation, that there was some work going on in connection, for example, with the Jackson County project in the last year or two, and while that work has now stopped and is not going on, it is my understanding that it may be—and that efforts are being made to continue it, so that I am not quite sure. I wouldn't want to say that nothing is going on because there are, for example, grazing districts in that Jackson County area that are functioning and continuing their efforts, but whether they are building anything at this moment, I can not accurately say.

Q. Who is carrying on any work, or who has been carrying on any work in connection with the project? That is shown by Exhibit 62, is it not, the filing on that?

A. That filing is an indication of the project or possibility that is there and has been for a number of years, although it has not been successfully completed or put into full operation. I think work periodically has been done on it, even from the earliest date of its inception. That first work,

as I get it from the records in the files of the state, involved expenditures of around $35,000 and the actual construction of quite a number of miles of ditch which, however, did not reach the state of completion and were not, as far as I can learn, put into actual operation.

Then I know that two years ago some further work of rehabilitation and repair, and to some extent enlargement in places, was carried on under the Civilian Conservation Corps that was established in that area in cooperation with the grazing districts, or some of them, in Jackson County.

Q. Mr. Patterson, isn't it a fact that the filing on that project, which is Exhibit No. 62, was made by the Jackson County Land and Irrigation Company?

A. I think that is the claimant under one of the filings covering the so-called Jackson County project.

Q. Sheet No. 2 of Exhibit No. 62 shows that company to be the claimant, does it not?

A. Yes, that covers Jackson County Land and Irrigation Ditch No. 1.

Q. I am referring particularly to the certificate in the left-hand corner reciting, "Know all men by these presents that the undersigned Jackson County Land and Irrigation Company, claimant"—

A. Yes.

Q. Are you aware of the fact that the Jackson County Land and Irrigation Company was dissolved by action of the proper officials of the State of Colorado on October 25, 1926?

A. No, I did not know that. I know that when the Director of the Taylor Grazing Act was interested in the project, the representatives of grazing districts in Jackson County attempted to locate the present owners of this original project. As to whether they located them or not, I couldn't say. I do not know about this formal action that you have mentioned here at all.

Q. Well, of course, if it should be a fact that the corporation was dissolved in 1926, at least the claimant has not done any work in connection with the project since that time.

A. Not the original claimant, no.

Q. Do you know of anyone who has succeeded to the rights of the original claimant?

Mr. WARREN. Colorado objects upon the ground it is wholly immaterial and irrelevant. This being a suit between the states, and it appearing that a large amount of work has been done toward the completion of this project, so far as this suit is concerned, it is wholly immaterial as to who may own any rights under this particular filing.

Q. You may answer the question.

A. What was the question?

(Last question read.)

A. No, I don't believe that I do. However, may I offer this comment, Mr. Wehrli? In Colorado, as I understand it, anyone may go and build a project at a site upon which a previous claimant may have made a filing. He does not acquire any preference in that regard because our constitution provides that the right of appropriation shall never be denied. The fact that one man made a filing would not deny anyone

else the right of going ahead and building that project.

Q. And in so far as you are concerned, Mr. Patterson, you do not know of anyone that is interested at the present time?

A. Oh, yes, I do. The project as a possibility is very much in the minds of people of Jackson County and the irrigation districts of that county.

Q. That refers to the general public. I mean some particular individual who either owns land that would be irrigated by it, or pasture land that would be irrigated by it, or who would be interested in the capture and conveyance of water for a consideration to others. Do you know of any such person?

Mr. WARREN. Just a moment. May our objection show to this entire line of questioning?

Mr. WEHRLI. Yes.

A. Not other than those livestock people of Jackson County who are interested through their grazing districts, and as individuals, in more irrigated pasture in Jackson County. I mean by that that I do not know of some non-resident of Jackson County who is now putting up any money to build something up there. I do not know that sort of a person. But the people of Jackson County who have livestock interests in that county are directly and indirectly interested in seeing this project carried to a conclusion, if possible.

Q. That is the extent of your knowledge as to anyone being interested in the project at the present time?

A. Yes. I would have to admit that our Board is also interested in it to this extent, that we are required by the Act creating the Board to assist the citizens of the state in organizing and in carrying out what their needs and hopes might be with respect to water development. So we are as a Board very much interested in the project, or in the possibility that is there.

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SUPREME COURT OF THE UNITED STATES.

No. 6, Original.—October Term, 1944.

The State of Nebraska, Complainant,
vs.
The State of Wyoming, Defendant, and
The State of Colorado, Impleaded Defendant,
The United States of America, Intervenor.
} Bill in Equity.

[June 11, 1945.]

Mr. Justice Douglas delivered the opinion of the Court.

Nebraska brought this suit in 1934 against Wyoming, invoking our original jurisdiction under Article III, Section 2 of the Constitution. 293 U. S. 523. Colorado was impleaded as a defendant. 296 U. S. 553. The United States was granted leave to intervene. 304 U. S. 545. Issues were joined. A Special Master, Honorable Michael J. Doherty, was appointed and hearings were held before him. The matter is before us on exceptions to his report.

I.

The controversy pertains to the use for irrigation purposes of the water of the North Platte River, a non-navigable stream. Nebraska alleged that Wyoming and Colorado by diversions of water from the river for irrigation purposes were violating the rule of priority of appropriation in force in the three States and depriving Nebraska of water to which she was equitably entitled. The prayer was for a determination of the equitable share of each State in the water and of the priorities of all appropriations in both States, and for an injunction restraining the alleged wrongful diversions. Wyoming denied the diversion or use of any water to which Nebraska was equitably entitled but joined in the prayer of Nebraska for an equitable apportionment. Colorado filed an answer, together with a cross-bill against Nebraska and Wyoming, which denied any use or threatened use of the water of the North Platte beyond her equitable share, and prayed for an equitable apportionment between the three States, excepting

only the tributary waters of the South Platte and Laramie rivers.[1] At the conclusion of Nebraska's case and again after all the evidence was in, Colorado moved to dismiss the suit on the ground that the evidence was insufficient to sustain any judgment in favor of, or against, any party. Colorado argues here that there should be no affirmative relief against her and that she should be dismissed from the case.

The North Platte River rises in Northern Colorado in the mountainous region known as North Park.[2] It proceeds in a northerly direction on the east side of the Continental Divide, enters Wyoming west of Cheyenne, and continues in a northerly direction to the vicinity of Casper. There it turns east across the Great Plains and proceeds easterly and southerly into and across Nebraska. About 40 miles west of the Nebraska line it is joined by the Laramie River. At North Platte, Nebraska, it is joined by the South Platte, forming the Platte River. It empties into the Missouri River at Plattsmouth, near the western border of Iowa. In North Park it is a rapid mountain stream. In eastern Wyoming it gradually broadens out, losing velocity. In western and central Nebraska its channel ranges from 3000 to 6000 feet; it frequently divides into small channels; and in times of low water is lost in the deep sands of its bed. Here it is sometimes characterized as a river "two miles wide and one inch deep".

There are six natural sections of the river basin: (1) North Park, Colorado, or more accurately Jackson County; (2) Colorado-Wyoming line to the Pathfinder Reservoir located between Rawlins and Casper, Wyoming; (3) Pathfinder Reservoir to Whalen, Wyoming which is 42 miles from the Nebraska line; (4) Whalen, Wyoming to the Tri-State Dam in Nebraska near the Wyoming-Nebraska line; (5) Tri-State Dam to the Kingsley Reservoir, west

[1] The waters of the South Platte and the Laramie were previously apportioned—the former between Colorado and Nebraska by compact (44 Stat. 195), the latter between Colorado and Wyoming by decree. Wyoming v. Colorado, 259 U. S. 496. Those apportionments are in no way affected by the decree in this case.

[2] Approximate length of the North Platte:

Colorado	70 miles
Wyoming	435 miles
Nebraska (to North Platte)	180 miles

Drainage area of the North Platte, exclusive of the Laramie River

Colorado	1,630 sq. mi.	6%
Wyoming	17,540 sq. mi.	63%
Nebraska	8,730 sq. mi.	31%
Total	27,900 sq. mi.	

of Keystone, Nebraska; (6) Kingsley Reservoir to Grand Island, Nebraska.[3]

The river basin in Colorado and Wyoming is arid, irrigation being generally indispensable to agriculture. Western Nebraska is partly arid and partly semi-arid. Irrigation is indispensable to the kind of agriculture established there. Middle Nebraska is sub-humid. Some crops can be raised without irrigation. But the lack of irrigation would seriously limit diversification. Eastern Nebraska, beginning at Grand Island, is sufficiently humid so as not to justify irrigation.

Irrigation in the river basin began about 1865, when some projects were started in eastern Wyoming and western Nebraska. Between 1880 and 1890 irrigation began on a large scale. Until 1909 storage of water was negligible, irrigation being effected by direct diversions and use. Prior to 1909 the development in Colorado and Wyoming was relatively more rapid than in Nebraska. Since 1910 the acreage under irrigation in Colorado increased about 14 per cent, that of Wyoming 31 per cent, and that of Nebraska about 100 per cent.[4] The large increase in Nebraska is mainly attributable to the use of storage water from the Pathfinder Reservoir.[5]

The Pathfinder Reservoir is part of the "North Platte Project" which followed the adoption by Congress in 1902 of the Re-

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[3] The average annual contributions from 1895 to 1939 to the water of the North Platte were computed by the Special Master as follows:

North Park	635,100 acre feet
Wyoming state line to Pathfinder	1,059,240 acre feet
Pathfinder to Whalen	390,000 acre feet
Whalen to Tri-State Dam	281,940 acre feet
Tri-State Dam to Kingsley	1,027,890 acre feet
Kingsley to Grand Island	308,200 acre feet

By States the contributions were as follows:

Colorado	819,220 acre feet	21%
Wyoming	1,731,600 acre feet	45%
Nebraska	1,336,090 acre feet	34%

[4]

	Colorado	*Wyoming*	*Nebraska**	*Total*
1880.....	200	11,000		11,200
1890.....	44,500	86,000	15,300	145,800
1900.....	83,500	169,100	105,690	358,290
1910.....	113,500	224,500	192,150	530,150
1920.....	129,140	265,375	306,930	701,445
1930.....	130,540	307,105	371,300	808,945
1939.....	131,810	325,720	383,355	840,885

* not including about 65,000 acres now irrigated from the Platte River between North Platte and Kearney, Neb.

[5] Of the 174,650 acre increase since 1910, 104,000 acres are North Platte Project lands.

clamation Act. 32 Stat. 388. Pathfinder was completed in 1913. It has a capacity of 1,045,000 acre feet, which is 79 per cent of the average annual run-off of the North Platte River at that point. This project includes an auxiliary channel reservoir called Guernsey, located above Whalen, Wyoming. Its capacity is 50,870 acre feet. The project also includes two small reservoirs in Nebraska—Lake Alice and Lake Minatare—having a capacity of 11,400 and 67,000 acre feet respectively. There are two main supply canals—Interstate and Fort Laramie—which take out from the North Platte at the Whalen diversion dam. The Interstate canal runs on the north side and the Fort Laramie on the south side of the river. Both extend far into Nebraska. Northport—a third canal—is located wholly in Nebraska. These canals and their laterals extend over 1600 miles. The project also includes a drainage system and two hydroelectric power plants. The United States contracted with landowners or irrigation districts for use of the water—selling it, as contemplated by the Reclamation Act, so as to recoup the cost of the project which was about $19,000,000. It also entered into so-called Warren Act contracts pursuant to the Act known by that name (36 Stat. 925) which authorized the Secretary of the Interior to contract for the storage and delivery of any surplus water conserved by any reclamation project in excess of the requirements of the project.

We have mentioned the Interstate, Ft. Laramie, and Northport canals which are part of the North Platte Project, the first two of which take out at the Whalen diversion dam. About a mile east of the Wyoming-Nebraska line is the Tri-State Dam. Just above that dam in Nebraska are the headgates of three large Nebraska canals—Tri-State, Gering, and Northport. Water for the Northport is diverted through the Tri-State headgate, Northport physically being an extension of the Tri-State canal. Another Nebraska canal is the Ramshorn which also receives its supply through Tri-State. Just above the state line is the headgate of the Mitchell canal serving Nebraska land. While these five canals are commonly referred to as the Nebraska State Line Canals, this opinion generally uses the term as excluding Northport which, as we have said, is a North Platte Project canal. There are also nine Wyoming private canals diverting below Whalen. One of these, French Canal, serves lands in both Wyoming and Nebraska. The section of the river from Whalen to the Tri-State Dam is the pivotal section of the entire river. In this short stretch of 40 odd miles

is concentrated a demand for water as great as in the entire preceding 415 miles apart from the Kendrick project to which we will refer. We will return to a consideration of the problems of this pivotal section shortly.

The North Platte Project has greatly increased the water resources of the river available for irrigation. Unused and wasted water are stored and held over from one season to another. Moreover, the storage water has affected the water tables through saturation of the subsoil. This has increased the return flows available for rediversion and irrigation. The Special Master found that due largely to the influence of the North Platte Project and the application of storage water to lands in eastern Wyoming and western Nebraska the return flows increased from a negligible quantity in 1911 to 700,000 acre feet in 1927. While that amount sharply declined during the drought beginning in 1931, it still is substantial. Thus from 1931-1936 it amounted to 54,300 acre feet in the Whalen-Tri-State Dam section. And as we have already said, the great and disproportionate increase in acreage irrigated in Nebraska since 1910 as compared with the increase in Colorado and Wyoming is largely attributable to the North Platte Project. While the North Platte Project has increased the water resources, it has complicated the problem of water administration in Wyoming and Nebraska. It has necessitated a segregation of storage and natural flow. The storage plants and diversion works are in Wyoming, although much of the beneficial use is in Nebraska. Appropriators in Nebraska are dependent on regulation and control in Wyoming.

There is a second large federal irrigation project in Wyoming known as the Kendrick project, the estimated cost of which is over $19,000,000. Its primary purpose is the irrigation of some 66,000 acres north and west of Casper, Wyoming. The first unit, capable of serving 35,000 acres, was completed in 1940. Due to the lack of water supply it has not yet been put into operation. The second unit is under construction. The storage facilities are completed. They consist of two channel reservoirs—the Seminoe, thirty miles above Pathfinder, with a capacity of 1,026,400 acre feet; the Alcova, thirteen miles below Pathfinder, with a capacity of 190,500 acre feet. Casper Canal will divert the water at Alcova and serve the lands of the project.

The combined storage capacity of the reservoirs of these two federal projects—Kendrick and North Platte—is 2,313,270 acre

feet which, as the Special Master found, is 175 per cent of the long-time average annual run-off of the river at Pathfinder.

There are also two projects in Nebraska—Sutherland, with a capacity of 175,000 acre feet and Tri-County with a capacity of 2,000,000 acre feet. The latter is expected to bring under irrigation an additional 205,000 acres in Nebraska. Including that acreage but excluding the 60,000 acres expected to be irrigated in Wyoming under the Kendrick project the Special Master found that the acreages under irrigation in the three States would be approximately as follows:

Colorado	131,800 acres	(12%)
Wyoming	325,720 "	(29%)
Nebraska	653,355 "	(59%)
Total	1,110,875	(100%)

Prior to the time when the North Platte project went into operation there was a serious shortage of water for irrigation in western Nebraska and to some extent in eastern Wyoming. Many irrigation enterprises were closed. After the North Platte Project had been in operation for awhile most of the projects which had been abandoned were reopened. From then until 1931 the supply was reasonably adequate for most of the canals. But the year 1931 started the driest cycle or swing in the North Platte and Platte River valleys of which there is any record. The annual flow at Pathfinder[6] had always fluctuated widely.[7] The average flow for the 37 years commencing in 1904 was 1,315,900 acre feet, the maximum was 2,399,400 in 1917, the minimum was 382,200 in 1934. But a critical condition arose in 1931 with the advent of the dry cycle. The flow for each of the years between 1931 and

[6] Which the Special Master found to be the best single index on the river due to the fact that the main accretions of Colorado and Wyoming are already in the river and the natural flow is not appreciably distorted by storage releases as it is below Pathfinder.

[7]

Year	*Acre Feet*	*Year*	*Acre Feet*	*Year*	*Acre Feet*
1904..	1262000	1916	1253400	1928	1725400
05..	1159400	17	2399400	29	1902700
06..	1351000	18	1486100	1930	1072800
07..	1851100	19	859700	31	706300
08..	918600	1920	1870100	32	1506600
09..	2381800	21	1782000	33	1149500
1910..	918100	22	1148200	34	382200
11..	1123400	23	1500800	35	696200
12..	1820500	24	1489900	36	1045600
13..	1265000	25	1244700	37	1130600
14..	1550900	26	1776500	38	1334900
15..	900200	27	1456200	39	698200
				1940	569800

1940 as compared with the mean of the flow for the 37 year period ending in 1940 was as follows:

1931.....	55 per cent	1936.....	81 per cent
1932.....	116 per cent	1937.....	87 per cent
1933.....	89 per cent	1938.....	103 per cent
1934.....	30 per cent	1939.....	54 per cent
1935.....	54 per cent	1940.....	44 per cent

Since 1930 only one year equalled the mean of the 1904 to 1930 period. Previous droughts had not exceeded two or three years. The present cycle has persisted for 13 years.

The commencement of this dry cycle plus the initiation of the Kendrick project precipitated the present controversy. Nebraska rests her case essentially on evidence of shortage and of misappropriation of water by the upper States since 1930 and of threats of more serious shortage and diversions in the future.

II.

The equitable apportionment which Nebraska seeks is based on the principle of priority of appropriation applied interstate. Colorado and Wyoming have the rule of priority of appropriation as distinguished from the rule of riparian rights. Colo. Constitution, Art. XVI, Secs. 5, 6; *Farmers' Highline Canal Co.* v. *Southworth*, 13 Colo. 111; *Sternberger* v. *Seaton Co.*, 45 Colo. 401; Wyo. Constitution, Art. VIII, Sec. 3; Wyo. Rev. Stat. 1931, §§ 122-401, 122-418, 122-419; *Moyer* v. *Preston*, 6 Wyo. 308. And see the discussion of the problem in *Wyoming* v. *Colorado*, 259 U. S. 419, 459. Nebraska on the other hand was originally a riparian doctrine State. See *Meng* v. *Coffee*, 67 Neb. 500. But when the more arid sections of the State were settled and the need for irrigation increased, legislation was enacted adopting the appropriation principle. See Neb. L. 1889, ch. 68; L. 1895, ch. 69. That principle was recognized in the constitution which Nebraska adopted in 1920. See Article XV, Secs. 4, 5, and 6. The adoption of the rule of appropriation did not extinguish riparian rights which had previously vested. See *Clark* v. *Cambridge & A. I. & I. Co.*, 45 Neb. 798; *Crawford Co.* v. *Hathaway*, 60 Neb. 754, 61 Neb. 317, 67 Neb. 325; *Osterman* v. *Central Nebraska P. P. & I. District*, 131 Neb. 356. But riparian rights may be condemned in favor of appropriators; and violation of riparian rights by appropriators will not be enjoined, only compensation or damages being awarded. *Cline* v. *Stock*, 71 Neb. 79; *McCook I. & W. P. Co.* v. *Crews*, 70 Neb. 115. In that sense riparian rights are considered inferior to rights of

appropriators. More important, the rights asserted by Nebraska in this suit are based wholly on appropriations which have been obtained and recognized under Nebraska law. The appropriation system is dominant in the regions of Nebraska which are involved in the present litigation. Hence we, like the Special Master, treat the case as one involving appropriation rights not only in Colorado and Wyoming but in Nebraska as well.

North Park. There are at present in the North Park area in Colorado (Jackson County) 131,800 acres irrigated. The climate is arid. The sole industry is cattle raising, the only crops being native hay and pasturage. The growing season is short. While the diversions are high per acre (about 4½ acre feet) the return flows are large, making the average consumptive use[8] rate only .74 acre foot per acre. The 131,800 acres of irrigated land consume 98,572 acre feet annually, including reservoir evaporation. Exportations from the basin are expected to average 6,000 acre feet, making the total annual depletion 104,540 acre feet. Though Colorado claimed that an additional 100,000 acres in North Park was susceptible of irrigation, the Special Master found that there are only about 34,000 acres of additional land that could be brought under irrigation; 30,390 of those acres are irrigable from constructed ditch systems having water rights. Those projects, however, are not completed; they are indeed projects for the indefinite future. In addition to these projects in North Park, Colorado also has proposed that large quantities of water from the river be exported from the basin into other rivers.

There have been out-of-priority diversions in Colorado and Wyoming above Pathfinder in relation to the priorities and needs of Nebraska users. Their full extent is not known. But as respects Pathfinder, the Special Master estimated that Colorado appropriators junior to Pathfinder consume about 30,000 acre feet a year. Since Pathfinder after 1930 has never been filled and has always been in need of water for storage, those Colorado junior diversions may be said to have violated the Pathfinder priority. The claims of Colorado to additional demands were construed by the Special Master as a threat of further depletion of the river within North Park. He found that there was no surplus in the supply and that any material increase in diversions in Colorado would be in violation of established priorities, notably Pathfinder.

[8] Consumptive use represents the difference between water diverted and water which returns to the stream after use for irrigation.

Colorado Line to Pathfinder Reservoir. In the region between the Colorado-Wyoming line and Pathfinder appropriation rights cover about 272,000 acres, 149,400 of which are irrigated. But of those only 9,400 acres are irrigated from the main stream, the balance being irrigated from tributaries. The consumptive use rate is about 1 acre foot per acre. Over two-thirds of the volume of diversions (main stream and tributaries) and 88 per cent from the main stream are senior to the North Platte Project. They are in the main junior to the State Line Canals in Nebraska. Those projects junior to Pathfinder have been operated since 1930 in violation of its priority. The Special Master found that there is no present prospect of any large expansion of irrigation in this area, though five additional projects have been contemplated, some of them being partially constructed. The accretions to the river from tributaries in this section are very large—about 790,240 acre feet net. Land consumption is 16 per cent of the net accretions, while that of rights junior to Pathfinder is about 5.6 per cent of the net.

North Platte Project. The priority of Pathfinder is December 6, 1904 and of Guernsey April 20, 1923. Between Pathfinder and the Nebraska state line there are 32 canals on the main river which have priorities senior to Pathfinder. The State Line Canals in Nebraska also are senior to Pathfinder. And Guernsey is junior to all canals below it down to the Nebraska line. The percentage of rights in each section senior and junior to the North Platte Project are as follows:

	Percentage Senior	*Percentage Junior*
North Park	67	33
Colorado State Line to Pathfinder Reservoir	88	12
Pathfinder Reservoir to Whalen	52	48
Whalen to Nebraska State Line (Wyoming private canals)	91	9
Nebraska State Line Canals	100	0

Under Wyoming law reservoirs in storing water must observe the priority of all senior Wyoming canals below them on the main river.

Kendrick Project. Seminoe Reservoir has a priority of December 1, 1931; Casper Canal, July 27, 1934 (natural flow); Alcova Reservoir, April 25, 1936. Apart from minor exceptions Seminoe is junior to every appropriator from Alcova to the Tri-State Dam. The project is expected to operate chiefly on storage water. In its

early stages its water requirements will be heavier than they will be later, due to ground absorption and storage. When the project has been in operation a while, the depletion during the irrigation season will be about 122,000 acre feet, except as water stored in non-irrigation season is used. The Special Master found, however, that without violating the Pathfinder priority, the Kendrick project could have stored no water since 1930 and can store none in the future if present conditions continue. He also found that under the average conditions which prevailed from 1895 to 1939 water could be conserved by Seminoe and Alcova without violation of the priorities between Pathfinder and Tri-State Dam and in sufficient quantities to supply Kendrick and to leave considerable return flow to the river in the irrigation season. There are in the first unit of the project two sump areas into which return water will flow and from which the United States has constructed drainage ditches so as to return the water to the river. On the uncompleted unit three sump areas are planned. These are designed to return to the river water which otherwise would be lost.

Pathfinder to Whalen. The total land irrigated in this section is in excess of 55,000 acres, of which about 14,000 acres are supplied from the main river. Alfalfa, sugar beets, potatoes, and grains are the principal irrigated crops. There are 60 canals taking out of the main river with priorities ranging from 1887 to 1937. In terms of acreage about 48 per cent of the rights on the river in this section are junior to the North Platte Project. All except one are junior to the Tri-State canal and most of them are junior to the other Nebraska State Line Canals. The irrigation projects on the river average not over 160 acres. The consumptive use rate is about 1.1 acre feet per acre. The diversion rate of 2.5 acre feet per acre is deemed adequate. But during the 1931-1940 period the average seasonal diversion rate for the section was only 2 acre feet, since in low stages of flow some of the ditches are unable to divert any water. But at the rate of 2.5 acre feet the total seasonal headgate diversion for the 14,000 acres is 35,000 acre feet of which 18,200 acre feet would be returned to the river. Of that return all but 15 per cent (2,730 acre feet) would occur during the irrigation season. The tributary inflow is greater than river depletion due to irrigations and other losses. The average annual net gain from 1931-1940 was 64,200 acre feet. During the 1931-1940 period, the maximum seasonal average consumption out-of-priority in relation to the Nebraska State Line

Canals was found by the Special Master to be 5,400 acre feet. With probable minor exceptions there are no further possibilities for irrigation developments in this section.

Whalen to Tri-State Dam. As we have said, this is the pivotal section of the river around which the central problems of this case turn. Apart from the Kendrick project, the demand for water is as great in this short section of the river as in the entire preceding 415 miles from North Park to Whalen. The lands irrigated from the river in this section total 326,000 acres as compared with 339,200 acres in the upper valley—main river and tributaries. The consumptive use on this 326,000 acres far exceeds that of the upper sections combined. We have mentioned the various canals which take out from the river in this section. The Special Master found their annual requirements to be 1,072,514 acre feet. The total net seasonal requirement of all the canals diverting in this section was found to be 1,027,000 acre feet. In the ten year period from 1931 to 1940 this net seasonal requirement of 1,027,000 acre feet largely exceeded the supply in three years and was less than the supply in seven years.[9] In those seven years the seasonal flows passing the Tri-State dam were far less than the excesses, indicating as the Special Master concluded that canal diversions in the section were greater than the requirements. He pointed out that if the diversions during the period had been restricted to the determined requirements and if the excess had been held in storage in the upper reservoirs and releasd indiscriminatly to all canals as needed, irrespective of storage rights, any surplus water would have been conserved and would not have passed Tri-State. He estimated that under that method of operation the total supply (excluding any supply for Kendrick) would have been approximately sufficient for the section.

But on the basis of the 1931-1940 supply the seasonal requirement of 1,027,000 acre feet cannot be met by natural flow alone and without storage water. The Special Master roughly estimated

[9] The excess or deficiency for each of those years is indicated by the following:

1931....	+ 113,300	1936....	+ 5,480
1932....	+ 352,500	1937....	+ 225,350
1933....	+ 465,100	1938....	+ 143,150
1934....	— 515,400	1939....	+ 66,050
1935....	— 157,000	1940....	— 382,080

the deficiency of natural flow as follows for the period of 1931 to 1940:

Year	*Deficiency of Natural Flow*[1]
1931	552,952 acre feet
1932	305,000 " "
1933	251,980 " "
1934	841,488 " "
1935	666,058 " "
1936	495,737 " "
1937	489,975 " "
1938	501,991 " "
1939	450,908 " "
1940	751,244 " "

[1] "Natural flow", as used by the Special Master and as used in this opinion, means all water in the stream except that which comes from storage water releases.

On that basis the average seasonal supply of natural flow available in this section was only 48 per cent of the total requirement. In 1938, the year of largest flow, it was only 75 per cent. In general the practice has been to allow storage right canals having early priorities to receive natural flow water on a priority basis, using storage water merely as a supplementary supply. In this area 90 per cent of the lands have both natural flow and storage rights.[10] Seventy-eight per cent of the lands having storage rights are in Nebraska, 22 per cent in Wyoming. Of the lands having natural flow rights only 49 per cent are in Nebraska and 51 per cent in Wyoming.

As respects priority, the canals (listed later in this opinion) fall into thirteen groups, seven in Wyoming and six in Nebraska. The earliest in priority are some canals in Wyoming, then some in Nebraska, then others in Wyoming and so on.

The exceptional features of this section of the river were summarized by the Special Master as follows:

> "(1) the great concentration of demand in a short compact section, (2) the presence of water, both natural flow and storage, to which Nebraska users are entitled under Wyoming appropriations, (3) the total dependence of Nebraska State Line Canals and the North Platte project canals upon water originating in Wyoming and Colorado, (4) the joint use of canals to serve both Wyoming and Nebraska lands, (5) the location in Wyoming of the head gates and works which divert great volumes of water for Nebraska, (6) the distinctly interstate scope and character of the water distribution without any real interstate administration."

[10] Of this 90 per cent, 68 per cent are project lands and 32 per cent have Warren Act contracts.

The Special Master made a detailed study of the requirements of each canal in this section and the diversions of each during the 1931-1940 period. We need not recapitulate it. The nine Wyoming canals and the Tri-State canal fared well. A comparison of the average seasonal diversions with the seasonal requirements shows that they had an excess supply for the ten year period—122 per cent and 111 per cent respectively—the former having a deficiency in only one of the ten years, the latter a deficiency in three. For the rest of these canals it appears that the average seasonal diversions supplied from 78 per cent to 98 per cent of their seasonal requirements. The Ft. Laramie was short in eight of the ten years, Gering, Ramshorn and Northport in seven each.

Tri-State Dam to Bridgeport, Neb. Nebraska originally claimed that any equitable distribution which was made should extend to all irrigated lands as far east as Grand Island, Neb. It is now conceded that the lands east of Bridgeport, Neb., which is some sixty miles from the Wyoming-Nebraska state line, can be reasonably satisfied out of local supplies. Hence we are not concerned in this case with that section.

In the section west of Bridgeport, there are twelve canals exclusive of the Ramshorn relevant to the present problem. Their requirements are 132,420 acre feet; their demand on the main river is 102,810 acre feet, the balance being obtained from interceptions of drains, return flows, and tributary streams. The Special Master concluded that local supplies even during the drought period were adequate to take care of the needs of these canals without calling upon up-river water. Some shortages occurred, caused for example by excessive use by some canals at the expense of others or by the withdrawal of water from the section to supply senior canals below. It would seem that the construction and operation of the Kingsley and Sutherland Reservoirs would largely eliminate the latter condition. And water passing Tri-State Dam and usable in the Tri-State to Bridgeport section is substantial—the mean divertable flow for the irrigation season in the 1931-1940 period being 81,700 acre feet. Over half of this occurred in May and June; very little in August and September.

III.

Motion to Dismiss. As we have noted, Colorado moves to dismiss the proceeding. She asserts that the pleadings and evidence both indicate that she has not injured nor presently threatens to

injure any downstream water user. She emphasizes the large increase since 1910 in acreage under irrigation in Wyoming and Nebraska as compared with the increase in Colorado. She asserts there is a surplus of water in the stream, as evidenced by the fact that during the recent drought or dry cycle the Kendrick Project in Wyoming and the Tri-County Project in Nebraska have been constructed, indicating that the sponsors considered that the available water supply was not entirely used by existing projects. And she emphasizes that during the drought there was a divertible flow passing Tri-State Dam during the irrigation season. The argument is that the case is not of such serious magnitude and the damage is not so fully and clearly proved as to warrant the intervention of this Court under our established practice. *Missouri* v. *Illinois*, 200 U. S. 496, 521; *Colorado* v. *Kansas*, 320 U. S. 383, 393-394. The argument is that the potential threat of injury, representing as it does only a possibility for the indefinite future, is no basis for a decree in an interstate suit since we cannot issue declaratory decrees. *Arizona* v. *California*, 283 U. S. 423, 462-465, and cases cited.

We fully recognize those principles. But they do not stand in the way of an entry of a decree in this case.

The evidence supports the finding of the Special Master that the dependable natural flow of the river during the irrigation season has long been over-appropriated. A genuine controversy exists. The States have not been able to settle their differences by compact. The areas involved are arid or semi-arid. Water in dependable amounts is essential to the maintenance of the vast agricultural enterprises established on the various sections of the river. The dry cycle which has continued over a decade has precipitated a clash of interests which between sovereign powers could be traditionally settled only by diplomacy or war. The original jurisdiction of this Court is one of the alternative methods provided by the Framers of our Constitution. *Missouri* v. *Illinois*, 180 U. S. 208, 241; *Georgia* v. *Tennessee Copper Co.*, 206 U. S. 230, 237. The Kendrick Project plainly is an existing threat to senior appropriators down stream. As we have noted, it is junior to practically every appropriation on the river between Alcova and the Tri-State Dam. Since 1930 there would have been no water for it if it were operated on a priority basis. And in view of the general position taken by Wyoming with respect to Nebraska priorities, it cannot

be assumed that the Kendrick Project would be regulated for the benefit of senior appropriators in Nebraska. Neither Wyoming nor Colorado has ever recognized any extension of priorities across state lines. They have never limited or regulated diversions by their appropriators in subordination to the senior appropriators of a down-stream State. Out-of-priority diversions by Colorado have had an adverse effect downstream. We do not know their full extent; but we do know that Colorado appropriators junior to Pathfinder consume about 30,000 acre feet a year and that Pathfinder has never been filled since 1930 and has always been in need of water. This alone negatives the absence of present injury. The fact that on the average there is some water passing Tri-State Dam unused is no answer. While over half of that excess amount occurred in May and June, there was comparatively little in August and September. Moreover, we are dealing here with the problems of natural flow. The critical condition of the supply of the natural flow during 1931-1940 in the Whalen to Tri-State Dam section is obvious. The claim of Colorado to additional demands may not be disregarded. The fact that Colorado's proposed projects are not planned for the immediate future is not conclusive in view of the present over-appropriation of natural flow. The additional demands on the river which those projects involve constitute a threat of further depletion. Colorado in her argument here asserts that "if Jackson County is to maintain its livestock industry to the same extent as it has in the past it will have to develop this additional summer pasture and it cannot do this without increasing its irrigated acreage."

What we have then is a situation where three States assert against a river, whose dependable natural flow during the irrigation season has long been over appropriated, claims based not only on present uses but on projected additional uses as well. The various statistics with which the record abounds are inconclusive in showing the existence or extent of actual damage to Nebraska. But we know that deprivation of water in arid or semi-arid regions cannot help but be injurious. That was the basis for the apportionment of water made by the Court in *Wyoming* v. *Colorado, supra*. There the only showing of injury or threat of injury was the inadequacy of the supply of water to meet all appropriative rights. As much if not more is shown here. If this were an equity suit to enjoin threatened injury, the showing made by Ne-

braska might possibly be insufficient. But *Wyoming* v. *Colorado*, *supra*, indicates that where the claims to the water of a river exceed the supply a controversy exists appropriate for judicial determination. If there were a surplus of unappropriated water, different considerations would be applicable. Cf. *Arizona* v. *California*, 298 U. S. 558. But where there is not enough water in the river to satisfy the claims asserted against it, the situation is not basically different from that where two or more persons claim the right to the same parcel of land. The present claimants being States we think the clash of interests to be of that character and dignity which makes the controversy a justiciable one under our original jurisdiction.

Colorado v. *Kansas*, *supra*, is not opposed to this view. That case turned on its special facts. It is true that an apportionment of the water of an interstate river was denied in that case. But the downstream State (Kansas) did not sustain the burden of showing that since the earlier litigation between the States (see *Kansas* v. *Colorado*, 206 U. S. 46), there had been a material increase in the depletion of the river by Colorado. Improvements based upon irrigation had been made by Colorado while Kansas stood by for over twenty years without protest. We held that in those circumstances a plain showing was necessary of increased depletion and substantial injury to warrant a decree which would disrupt the economy of the up-stream State built around irrigation. Moreover, we made clear (320 U. S. p. 392, note 2) that we were not dealing there with a case like *Wyoming* v. *Colorado*, *supra*, where the doctrine of appropriation applied in each of the States which were parties to the suit and where there was not sufficient water to meet all the present and prospective needs.

Colorado's motion to dismiss is accordingly denied.

IV.

Claim of United States to Unappropriated Water. The United States claims that it owns all the unappropriated water in the river. It argues that it owned the then unappropriated water at the time it acquired water rights by appropriation for the North Platte Project and the Kendrick Project. Its basic rights are therefore said to derive not from appropriation but from its underlying ownership which entitles it to an apportionment in this suit free from state control. The argument is that the United States acquired the original ownership of all rights in the water as well

as the lands in the North Platte basin by cessions from France, Spain and Mexico in 1803, 1819, and 1848, and by agreement with Texas in 1850. It says it still owns those rights in water to whatever extent it has not disposed of them. An extensive review of federal water legislation applicable to the Platte River basin is made beginning with the Act of July 26, 1866, 14 Stat. 251, the Act of July 9, 1870, 16 Stat. 217 and including the Desert Land Law (Act of March 3, 1877, 19 Stat. 377) and the Reclamation Act of June 17, 1902, 32 Stat. 388. But we do not stop to determine what rights to unappropriated water of the river the United States may have. For the water rights on which the North Platte Project and the Kendrick Project rest have been obtained in compliance with state law. Whether they might have been obtained by federal reservation is not important. Nor, as we shall see, is it important to the decree to be entered in this case that there may be unappropriated water to which the United States may in the future assert rights through the machinery of state law or otherwise.

The Desert Land Act "effected a severance of all waters upon the public domain, not theretofore appropriated, from the land itself." *California Oregon Power Co.* v. *Beaver Portland Cement Co.*, 295 U. S. 142, 158. It extended the right of appropriation to any declarant who reclaimed desert land and provided: "all surplus water over and above such actual appropriation and use, together with the water of all, lakes, rivers and other sources of water supply upon the public lands and not navigable, shall remain and be held free for the appropriation and use of the public for irrigation, mining and manufacturing purposes subject to existing rights." See *Ickes* v. *Fox*, 300 U. S. 82, 95; *Brush* v. *Commissioner*, 300 U. S. 352, 367.

Sec. 8 of the Reclamation Act provided: "That nothing in this Act shall be construed as affecting or intended to affect or to in any way interfere with the laws of any State or Territory relating to the control, appropriation, use, or distribution of water used in irrigation, or any vested right acquired thereunder, and *the Secretary of the Interior, in carrying out the provisions of this Act, shall proceed in conformity with such laws,* and nothing herein shall in any way affect any right of any State or of the Federal Government or of any landowner, appropriator, or user of water in, to, or from any interstate stream or the waters thereof: *Pro-*

vided, That *the right to the use of water acquired under the provisions of this Act shall be appurtenant to the land irrigated, and beneficial use shall be the basis, the measure, and the limit of the right.*". (Italics added.)

The Secretary of the Interior pursuant to § 3 of the Reclamation Act withdrew from public entry certain public lands in Nebraska and Wyoming which were required for the North Platte Project and the Kendrick Project. Initiation of both projects was accompanied by filings made pursuant to § 8 in the name of the Secretary of the Interior for and on behalf of the United States. Those filings were accepted by the state officials as adequate under state law. They established the priority dates for the projects. There were also applications to the States for permits to construct canals and ditches. They described the land to be served. The orders granting the applications fixed the time for completion of the canal, for application of the water to the land, and for proof of appropriation. Individual water users contracted with the United States for the use of project water. These contracts were later assumed by the irrigation districts. Irrigation districts submitted proof of beneficial use to the state authorities on behalf of the project water users. The state authorities accepted that proof and issued decrees and certificates in favor of the individual water users. The certificates named as appropriators the individual landowners. They designated the number of acres included, the use for which the appropriation was made, the amount of the appropriation, and the priority date. The contracts between the United States and the irrigation districts provided that after the stored water was released from the reservoir it was under the control of the appropriate state officials.

All of these steps make plain that those projects were designed, constructed and completed according to the pattern of state law as provided in the Reclamation Act. We can say here what was said in *Ickes* v. *Fox, supra,* pp. 94-95: "Although the government diverted, stored and distributed the water, the contention of petitioner that thereby ownership of the water or water-rights became vested in the United States is not well founded. Appropriation was made not for the use of the government, but, under the Reclamation Act, for the use of the land owners; and by the terms of the law and of the contract already referred to, the water-rights became the property of the land owners, wholly distinct from the

property right of the government in the irrigation works. Compare *Murphy* v. *Kerr*, 296 Fed. 536, 544, 545. The government was and remained simply a carrier and distributor of the water (*ibid.*), with the right to receive the sums stipulated in the contracts as reimbursement for the cost of construction and annual charges for operation and maintenance of the works."

The property right in the water right is separate and distinct from the property right in the reservoirs, ditches or canals. The water right is appurtenant to the land, the owner of which is the appropriator. The water right is acquired by perfecting an appropriation, i. e., by an actual diversion followed by an application within a reasonable time of the water to a beneficial use. See *Murphy* v. *Kerr*, 296 Fed. 536, 542, 544, 545; *Commonwealth Power Co.* v. *State Board*, 94 Neb. 613; *Kersenbrock* v. *Boyes*, 95 Neb. 407. Indeed § 8 of the Reclamation Act provides as we have seen that "the right to the use of water acquired under the provisions of this Act shall be appurtenant to the land irrigated, and beneficial use shall be the basis, the measure, and the limit of the right."

We have then a direction by Congress to the Secretary of the Interior to proceed in conformity with state laws in appropriating water for irrigation purposes. We have a compliance with that direction. Pursuant to that procedure individual landowners have become the appropriators of the water rights, the United States being the storer and the carrier.[11] We intimate no opinion whether a different procedure might have been followed so as to appropriate and reserve to the United States all of these water rights. No such attempt was made. Though we assume *arguendo* that the United States did own all of the unappropriated water, the appropriations under state law were made to the individual landowners pursuant to the procedure which Congress provided in the Reclamation Act. The rights so acquired are as definite and complete as if they were obtained by direct cession from the federal government. Thus even if we assume that the United States owned the unappropriated rights, they were acquired by the landowners in the precise manner contemplated by Congress.

[11] The right of the United States as storer and carrier is not necessarily exhausted when it delivers the water to grantees under its irrigation projects. Thus in Ide *v.* United States, 263 U. S. 497 the right of the United States was held to extend to water which resulted from seepage from the irrigated lands under its project and which was not susceptible of private appropriation under local law.

It is argued that if the right of the United States to these water rights is not recognized, its management of the federal projects will be jeopardized. It is pointed out, for example, that Wyoming and Nebraska have laws which regulate the charges which the owners of canals or reservoirs may make for the use of water. But our decision does not involve those matters. We do not suggest that where Congress has provided a system of regulation for federal projects it must give way before an inconsistent state system. We are dealing here only with an allocation, through the States, of water rights among appropriators. The rights of the United States in respect to the storage of water are recognized. So are the water rights of the landowners. To allocate those water rights to the United States would be to disregard the rights of the landowners. To allocate them to the States, who represent their citizens *parens patriæ* in this proceeding,[12] in no wise interferes with the ownership and operation by the United States of its storage and power plants, works, and facilities. Thus the question of the ownership by the United States of unappropriated water is largely academic so far as the narrow issues of this case are concerned.

V.

There is some suggestion that if we undertake an apportionment of the waters of this interstate river, we embark upon an enterprise involving administrative functions beyond our province. We noted in *Colorado* v. *Kansas*, *supra*, p. 392, that these controversies between States over the waters of interstate streams "involve the interests of quasi-sovereigns, present complicated and delicate questions, and, due to the possibility of future change of conditions, necessitate expert administration rather than judicial imposition of a hard and fast rule. Such controversies may appropriately be composed by negotiation and agreement, pursuant to the compact clause of the federal Constitution. We say of this case, as the court has said of interstate differences of like nature, that such mutual accommodation and agreement should, if possible, be the medium of settlement, instead of invocation of our adjudicatory power." But the efforts at settlement in this case have failed. A genuine controversy exists. The gravity and importance of the case are apparent. The difficulties of drafting and

[12] Kansas v. Colorado, 206 U. S. 46; Missouri v. Illinois, 180 U. S. 208.

enforcing a decree are no justification for us to refuse to perform the important function entrusted to us by the Constitution. Those considerations did not prevail in *Wyoming* v. *Colorado, supra,* where an apportionment of the waters of an interstate stream was made. Nor did they prevail in the drainage canal cases. *Wisconsin* v. *Illinois,* 278 U. S. 367, 281 U. S. 179, 309 U. S. 569, 311 U. S. 107, 313 U. S. 547. And see *Sanitary District* v. *United States,* 266 U. S. 405. We do not believe they should prevail here.

We recognize the difficulties of the problem. The matter is a delicate one and extremely complex. To begin with we are confronted with the problem of equitable apportionment. The Special Master recommended a decree based on that principle. That was indeed the principle adopted by the Court in *Wyoming* v. *Colorado, supra,* where an apportionment of the waters of an interstate stream was made between two States, each of which had the rule of appropriation. In speaking of that rule in application to a controversy between States the Court, through Mr. Justice Van Devanter, said: "The cardinal rule of the doctrine is that priority of appropriation gives superiority of right. Each of these States applies and enforces this rule in her own territory, and it is the one to which intending appropriators naturally would turn for guidance. The principle on which it proceeds is not less applicable to interstate streams and controversies than to others. Both States pronounce the rule just and reasonable as applied to the natural conditions in that region; and to prevent any departure from it the people of both incorporated it into their constitutions. It originated in the customs and usages of the people before either State came into existence, and the courts of both hold that their constitutional provisions are to be taken as recognizing the prior usage rather than as creating a new rule. These considerations persuade us that its application to such a controversy as is here presented cannot be other than eminently just and equitable to all concerned." 259 U. S. p. 470. And see *Wyoming* v. *Colorado,* 286 U. S. 494; *Washington* v. *Oregon,* 297 U. S. 517, 526. Since Colorado, Wyoming, and Nebraska are appropriation States, that principle would seem to be equally applicable here.

That does not mean that there must be a literal application of the priority rule. We stated in *Colorado* v. *Kansas, supra,* that in determining whether one State is "using, or threatening to use, more than its equitable share of the benefits of a stream, all of the

factors which create equities in favor of one State or the other must be weighed as of the date when the controversy is mooted." 320 U. S. p. 394. That case did not involve a controversy between two appropriation States. But if an allocation between appropriation States is to be just and equitable, strict adherence to the priority rule may not be possible. For example, the economy of a region may have been established on the basis of junior appropriations. So far as possible those established uses should be protected though strict application of the priority rule might jeopardize them. Apportionment calls for the exercise of an informed judgment on a consideration of many factors. Priority of appropriation is the guiding principle. But physical and climatic conditions, the consumptive use of water in the several sections of the river, the character and rate of return flows, the extent of established uses, the availability of storage water, the practical effect of wasteful uses on downstream areas, the damage to upstream areas as compared to the benefits to downstream areas if a limitation is imposed on the former—these are all relevant factors. They are merely an illustrative not an exhaustive catalogue. They indicate the nature of the problem of apportionment and the delicate adjustment of interests which must be made.

Practical considerations of this order underlie Nebraska's concession that the priority rule should not be strictly applied to appropriations in Colorado, though some are junior to the priorities of appropriators in Wyoming and Nebraska. As the Special Master points out the flowage time of water from North Park to Bridgeport, Nebraska is between two and three weeks. If a canal in North Park were closed to relieve the shortage of a senior appropriator in Nebraska, it would be highly speculative whether the water would reach the Nebraska appropriator in time or whether the closing of the Colorado canal would work more hardship there than it would bestow benefits in Nebraska. Moreover, there is loss of water in transit from the upper to the downstream sections, increasing with the distance. The lower appropriator thus receives less than the upper appropriator loses. And there is evidence that a river-wide priority system would disturb and disrupt long established uses.

Nebraska, however, urges that priority of appropriation interstate be adopted from the Alcova Reservoir east and more particularly from the Whalen diversion dam east. She points out

that there is a large acreage of Nebraska land which is irrigated by canals diverting at Whalen. There are four canals diverting in Wyoming and irrigating land entirely or in part in Nebraska—Mitchell, Interstate, Ft. Laramie and French. For example, the diversion point for Mitchell is in Wyoming though all the land it serves is in Nebraska. Nebraska has maintained that diversions of that canal should be regulated to observe the priorities of senior Nebraska canals including Tri-State. Wyoming was willing to regulate her upstream junior appropriators for the benefit of Mitchell provided the water go to Mitchell and not be used for Tri-State which is senior to both Mitchell and certain Wyoming appropriators.[13] Nebraska therefore urges an interstate allocation which would require junior appropriators in Wyoming to respect not only Mitchell's priorities but also those of Tri-State and other Nebraska canals in this section of the river.

The United States takes substantially the same position on this matter as Nebraska except that it argues that a priority allocation interstate be confined to that area between Whalen and Tri-State Dam.

Wyoming contends for a system of mass allocation between the States, saying that no attempt can or should be made in this proceeding to determine the priorities interstate of the various appropriators in each State. The proposal of Wyoming envisages distribution of natural flow and storage water indiscriminately as a common fund to all users. It is based on the theory that there is a sufficiency of water for everyone.

The decree recommended by the Special Master departs from the theory of allocation advanced by the parties. In recommending his apportionment the Special Master did not rest on the long-time average flow of the river. We have discussed the drought which has persisted in this river basin since 1930. No one knows whether it has run its course or whether it represents a new norm. There is no reliable basis for prediction. But a controversy exists; and the decree which is entered must deal with conditions as they obtain today. If they substantially change, the decree can be adjusted to meet the new conditions. But the decree which is fashioned must be based, as the Special Master recognized, on the dependable flow. *Wyoming* v. *Colorado*, *supra*. In that case

[13] That controversy between the States is partly reflected in State v. Mitchell Irrigation District, 129 Neb. 586, and Mitchell Irrigation District v. Whiting, 59 Wyo. 52.

the Court pointed out that the average of all years was far from being a proper measure of the available supply. "An intending irrigator acquiring a water right based on such a measure would be almost certainly confronted with drought when his need for water was greatest. Crops cannot be grown on expectations of average flows which do not come, nor on recollections of unusual flows which have passed down the stream in prior years." 259 U. S. p. 476. On this record we cannot say that the dependable flow is greater than the average condition which has prevailed since 1930. For reasons which we discuss at a later point in this opinion, we deal only with natural flow, not with storage water as Wyoming urges. On the basis of the conditions which have obtained since 1930, it is plain that the natural flow of the river during the irrigation has been over-appropriated.

Colorado. As we have noted, there are presently under irrigation in this section of the river 131,800 acres which consume (including reservoir evaporation) 98,540 acre feet annually. Exportations from the basin amount on the average to 6,000 acre feet, making the total annual depletion 104,540 acre feet. There are, as we have seen, additional demands made by Colorado for future projects. The Special Master recommended that Colorado be enjoined (a) from the diversion of water for the irrigation in North Park of more than 135,000 acres of land, (b) from the accumulation in storage facilities in North Park of more than 17,000 acre feet between October 1 of any year and September 30 of the following year, and (c) from the transbasin diversion out of North Park of more than 6,000 acre feet between October 1 of any year and September 30 of the following year. Colorado excepts to these proposals. But with minor exceptions which we will note, we do not believe those exceptions are well taken.

We are satisfied that a reduction in present Colorado uses is not warranted. The fact that the same amount of water might produce more in lower sections of the river is immaterial. *Wyoming* v. *Colorado, supra*, p. 468. The established economy in Colorado's section of the river basin based on existing use of the water should be protected.[14] Cf. *Colorado* v. *Kansas, supra*, p. 394. Appropriators in Colorado junior to Pathfinder have made out-of-priority

[14] Nebraska objects to the margin of safety provided above actual existing uses. But we do not believe that the margin allowed is unjust under all the circumstances of the case.

diversions of substantial amounts. Strict application of the priority rule might well result in placing a limitation on Colorado's present use for the benefit of Pathfinder. But as we have said, priority of appropriation, while the guiding principle for an apportionment, is not a hard and fast rule. Colorado's countervailing equities indicate it should not be strictly adhered to in this situation. Colorado asserts, however, that the limitation of transbasin diversions to 6,000 acre feet a year should not be imposed. Her point is that 6,000 acre feet represent merely the average annual transbasin diversions, that annual diversions have exceeded that amount, and that a limitation of 6,000 acre feet annually will interfere with existing Colorado users. We think the point is well taken. The decree will enjoin Colorado exportations in excess of an average of 6,000 acre feet computed over a period of ten years.[15]

But Colorado's other exceptions to the suggested limitations to be placed on her use of the water of the North Platte are not sustained. The principal argument is that on the basis of the long time averages there is enough water to go around, that no limitation on use is warranted, and that the proposed limitation is a deprivation suffered by Colorado for the benefit of down stream users. But that argument fails if we assume, as we must on the evidence before us, that the dependable supply does not exceed the amount of water which has been available since 1930. Nor can we see how existing projects can be protected on the basis of the 1931-1940 supply if additional projects in Colorado are permitted. If at any time additional projects are threatened in downstream areas, Colorado may make complaint. If conditions of supply substantially change, any party can apply for modification of the decree. The decree will not necessarily be for all time. Provision will be made for its adjustment to meet substantially changed conditions. Nor will the decree interfere with relationships among Colorado's water users. The relative rights of the appropriators are subject to Colorado's control.

Colorado finally says that the proposed restriction on her uses of the water violate the Act of August 9, 1937, 50 Stat. 561, 595, which

[15] In accord with Colorado's suggestion the decree will embrace Jackson County and not North Park since the two are not coterminous and since Jackson County is entirely within the river basin and includes areas not located in North Park.

appropriated funds for the Kendrick Project. That Act provided that "in recognition of the respective rights of both the States of Colorado and Wyoming to the amicable use of the waters of the North Platte River, neither the construction, maintenance, nor operation of said (Kendrick) project shall ever interfere with the present vested rights or the fullest use hereafter for all beneficial purposes of the waters of said stream or any of its tributaries within the drainage basin thereof in Jackson County, in the State of Colorado, and the Secretary of the Interior is hereby authorized and directed to reserve the power by contract to enforce such provisions at all times." But that Act does not limit or restrict Nebraska's or Wyoming's claim for apportionment against Colorado. Moreover, the Kendrick Project under present conditions (which are the basis of the decree) could store no water without violating other priorities. If the long time average conditions return, it can do so. Only at that time could there be a possible conflict with the policy of Congress contained in the Act of August 9, 1937. If that condition arises and a conflict with Colorado's interests appear imminent, it will be time to consider the problem.

Colorado State Line to Pathfinder and Guernsey. The Special Master recommends that Wyoming be enjoined (a) from diverting water from the main river above Guernsey and from its tributaries above Pathfinder for the irrigation of more than 168,000 acres, and (b) from the accumulation of storage water in reservoirs above Pathfinder in excess of 18,000 acre feet between October 1 of any year and September 30 of the following year. We deem this restriction appropriate provided the limitation of storage above Pathfinder does not include Seminoe Reservoir which lies above Pathfinder and which is to be the main source of supply for the Kendrick Project. As we have noted, most of the land under irrigation in the section above Pathfinder is irrigated from tributaries. The rights are small but very numerous. The total acreage under irrigation is 153,000 acres, allowing for a margin of error. Below Pathfinder and above Guernsey the Special Master dealt only with diversions from the main river. He concluded that the run-off of the tributaries becomes so far exhausted before any shortage of water occurs in the main river that any regulation of the tributary diversions would be of no material benefit. The tributary inflow is greater than the depletion of the river. There

is some out-of-priority diversion as we have noted. But possibilities for future developments are largely non-existent. The Special Master concluded that if Wyoming were limited to the irrigation of 15,000 acres (which is the extent of present irrigation with a margin of error) natural conditions would militate against this section getting more than its equitable share of the water.

We think that is a practical and fair adjustment. So far as the tributaries above Pathfinder are concerned, practical difficulties of applying restrictions which would reduce the amount of water used by the hundreds of small irrigators would seem to outweigh any slight benefit which senior appropriators might obtain. This does not seem to be denied. And the conditions which obtain on the main river between Pathfinder and Guernsey support the limitation without more to the irrigation of 15,000 acres.

The United States, however, insists that some regulation of the tributaries between Pathfinder and Guernsey is essential. It claims that there are possibilities of future additional storage on these tributaries and that if future storage is increased there will be a reduction in tributary flows into the main river available for storage in the Guernsey, Lake Alice and Lake Minatare reservoirs of the North Platte Project. We do not know from the present record the precise extent of existing reservoir storage in this area. We do know, however, that there is some storage capacity, e. g. 20,000 acre feet in the La Prele Project. In absence of evidence showing what contribution these tributaries now make to the supply of the reservoirs or what additional storage projects may be possible or what their effect might be, the Special Master concluded there was an insufficient basis for any present limitation on storage. We find no evidence of any present threat to the water supply from this source. If such threat appears and it promises to disturb the delicate balance of the river, application may be made at the foot of the decree for an appropriate restriction.

Pathfinder, Guernsey, Seminoe and Alcova Reservoirs and the Casper Canal. The Special Master recommends that Wyoming be enjoined from the storage of water in these four reservoirs and from the diversion of natural flow water through the Casper Canal for the Kendrick Project, between and including May 1 and September 30 of each year, otherwise than in accordance with the rule of priority in relation to the appropriations of the Nebraska

lands supplied by the French Canal and by the State Line Canals; that all those Nebraska appropriations for that purpose be adjudged senior to those four reservoirs and to Casper Canal; and that the senior Nebraska appropriations be identified and defined as follows:

Lands	*Canal*	*Limitation in Second Feet*	*Seasonal Limitation in Acre Feet*
Tract of 1025 acres.....	French	15	2,227
Mitchell Irrigation District ...	Mitchell	195	35,000
Gering Irrigation District	Gering	193	36,000
Farmers Irrigation District ..	Tri-State	748	183,050
Ramshorn Irrigation District ..	Ramshorn	14	3,000

We have noted the priorities of Pathfinder and Guernsey, as well as those of the Kendrick Project. We have noted that their priorities make them junior to many downstream appropriators including the State Line Canals. While the four reservoirs in question are Wyoming appropriators, Pathfinder and Guernsey were designed more for the benefit of Nebraska than of Wyoming lands. Recognition of the priorities interstate makes obvious the propriety of an interstate apportionment.

Wyoming objects to this treatment of the Kendrick Project. As we have said, she contends for a mass allocation of water between Nebraska and Wyoming under which a diversion requirement of 168,000 acre feet should be allotted for the Kendrick Project. Wyoming has presented a detailed analysis of the water supply of the river on the basis of which it is argued that the flow during the period since 1930 is not the true measure of the dependable supply. It is urged that the long-time averages must be considered in computing the dependable supply and if they are and if the storage capacity of these reservoirs is added to the natural flow, the dependable supply will be increased. Moreover, Wyoming argues that no allocation can be made to individual appropriators in any of the States because they are not parties and cannot be bound in their absence.

We have carefully considered these contentions of Wyoming and have concluded that they do not warrant a departure from the method of allocation proposed by the Special Master. On the record before us we are not justified in assuming that there will be a greater supply than has been available during the 1931-1940 period. To base the decree on a larger supply would not be to base it on a dependable supply. Under those conditions

Kendrick can store no water. Even with reservoir regulation we are not convinced that Wyoming has shown an adequate supply to justify the allocation she seeks. The combined storage capacity of the North Platte and Kendrick projects is equal to 175 per cent of the long-time annual average river run-off of the river at Pathfinder. We have here storage capacity in excess of the practicable limits of a dependable supply as that term has hitherto been construed. *Wyoming* v. *Colorado*, *supra*.

A mass allocation was made in *Wyoming* v. *Colorado*. But there is no hard and fast rule which requires it in all cases. The standard of an equitable apportionment requires an adaptation of the formula to the necessities of the particular situation. We may assume that the rights of the appropriators *inter se* may not be adjudicated in their absence. But any allocation between Wyoming and Nebraska, if it is to be fair and just, must reflect the priorities of appropriators in the two States. Unless the priorities of the downstream canals senior to the four reservoirs and Casper Canal are determined, no allocation is possible. The determination of those priorities for the limited purposes of this interstate apportionment is accordingly justified. The equitable share of a State may be determined in this litigation with such limitations as the equity of the situation requires and irrespective of the indirect effect which that determination may have on individual rights within the State. *Hinderlider* v. *La Plata Co.*, 304 U. S. 92, 106-108.

Nebraska contends that the allotment to Farmers Irrigation District be increased in the seasonal limitation recommended, so that the Warren Act contract which it has may be recognized. But for reasons which we will elaborate the only water subject to the present allocation is natural flow. Contracts requiring the supplementation of natural flow by storage are unaffected.[16]

The United States contends that Nebraska's equitable share of natural flow water should be limited to that which is in fact being diverted and used by any or all of the designated canals within the specified limitations in acre-feet and second-feet. It is said that these provisions of the proposed decree are the operative pro-

[16] Whether, as between the United States together with the irrigation projects sponsored by it on the one hand and the Farmers Irrigation District on the other, the United States is estopped by United States v. Tilley, 124 F. 2d 850, to deny the amount of acreage covered by the Warren Act contract with the district is not relevant here.

visions which determine the amount of natural flow to be passed into the Whalen-Tri-State Dam section of the river. It is said that Nebraska can permit, as it has heretofore, water to pass the Tri-State Dam for use below that point even though her equitable share is calculated only on the basis of the needs of appropriators at or above Tri-State. And it is pointed out that the lands served by diversions below Tri-State have no equitable claim on water originating in Wyoming or Colorado, their needs being reasonably met by local supplies. We think, as we will develop later, that the record sustains the conclusion that equitable apportionment does not permit Nebraska to demand direct flow water from above Whalen for use below Tri-State. The reservoirs above Whalen may store water and Kendrick may divert whenever and to the extent that the Nebraska canals at or above Tri-State are not using or diverting natural flow. We do not believe, however, that any revision of this part of the proposed decree need be made. We cannot assume that Nebraska will undertake to circumvent the decree. Moreover, the proposed revision offers difficulties. As Nebraska points out, when a junior Nebraska canal having storage rights is closed to natural flow due to operation of Nebraska priorities, it should be allowed to make up the deficiency in its supply in relation to its requirements by asking for storage water under such contracts as it may have with the United States. The United States does not repudiate those contracts. We conclude that it would unduly complicate the decree to recast its provisions so as to take them into account. If, as the United States fears, the decree is administered so as to divert water from above Tri-State to the use of those diverting below Tri-State, application for appropriate relief may be made at the foot of the decree.

The United States asserts that it should be given a separate allocation of water even if it is not treated as the owner of unappropriated water and hence the possessor of an unbroken chain of title to project water. The Special Master concluded that the position of the United States or the Secretary of the Interior is that of an appropriator of water for storage under the laws of Wyoming and that its interests are represented in that connection by Wyoming. That was in line with the ruling of this Court when Wyoming moved to dismiss this very case on the ground, among others, that the Secretary of the Interior was a necessary party. *Nebraska* v. *Wyoming*, 295 U. S. 40, 43. The Court said: "The bill alleges, and we know as matter of law, that the Secre-

tary and his agents, acting by authority of the Reclamation Act and supplementary legislation, must obtain permits and priorities for the use of water from the State of Wyoming in the same manner as a private appropriator or an irrigation district formed under the state law. His rights can rise no higher than those of Wyoming, and an adjudication of the defendant's rights will necessarily bind him. Wyoming will stand in judgment for him as for any other appropriator in that state. He is not a necessary party." We have discussed the procedure of appropriation which has been followed in this region. The Secretary of the Interior made the appropriations under Wyoming law. But we have noted that the water rights were adjudicated to be in the individual landowners. Hence, so far as the water rights are concerned, we think it is not proper to analogize this case to one where the United States acquires property within a State and asserts its title against the State as well as others.

The United States claims that it is at least entitled to be recognized as the owner of the storage water with full control over its disposition and use under Wyoming law. That seems to be true under Wyoming law. Wyo. Rev. Stats. (1931) §§ 122-1601, 122-1602; *Scherck* v. *Nichols*, 55 Wyo. 4, 19. The decree which is entered will in no way cloud such claim as it has to storage water under Wyoming law; nor will the decree interfere with the ownership and operation by the United States of the various federal storage and power plants, works, and facilities. We repeat that the decree is restricted to an apportionment of the natural flow.

The decree will, however, place a restraint on the storage of water in Pathfinder, Guernsey, Seminoe and Alcova Reservoirs, so as to protect the Nebraska lands served by the French Canal and the State Line Canals which are senior. The United States points out that if Nebraska permits some of the natural flow to go below the Tri-State Dam, as it may do, thus causing certain of the State Line Canals to go short, those canals would be entitled to have any deficiencies replaced by the United States under Warren Act contracts. It says that under the proposed decree only storage water and not natural flow could be supplied and unless storage water is appropriately defined by the decree, it might not be possible to meet the contract requirements without violation of the limitations on natural flow which are fixed by the decree. And it says that that would be the result if storage water were defined

to exclude all water passed through a reservoir at any time when its inflow is as great as or greater than its outflow.

Nebraska recognizes the desirability of that course. She contends, however, that where the outflow is equal to or less than the intake, none of the released water can be considered as storage water. And she says that when the water being released is greater than the inflow, that portion which represents the amount of natural flow being taken in at the intakes cannot be considered as storage. See *Gila Valley Irr. Dist.* v. *United States,* 118 F. 2d 507. She says that the United States by its proposal is attempting to transform into storage water what is in fact natural flow originating above the reservoirs.

For reasons which will be more fully discussed, we think that storage water should be left for distribution in accordance with the contracts which govern it. Accordingly, we think it is advisable to define storage water in the manner proposed by the United States, so as to make the operation of the decree more certain and to adjust it to the storage water contracts which are outstanding. Storage water therefore is defined for purposes of this decree as any water which is released from reservoirs for use on lands under canals having storage contracts in addition to the water which is discharged through those reservoirs to meet the requirements of any canal as recognized in the decree. This definition does not adversely affect rights recognized in the decree. It is perhaps a departure from the ordinary meaning of storage. But so long as the Warren Act contracts are outstanding that definition is necessary in order to give them effectiveness. For they do not provide that the United States will furnish water in such amount as may from time to time be available. The United States agrees to deliver water which will, with all the water to which the land is entitled by appropriation or otherwise, aggregate a stated amount.[17]

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[17] Thus the contract with the Gering Irrigation District provides:

"The United States will impound, and store water in the Pathfinder Reservoir, or elsewhere and release the same into the North Platte River at such times and in sufficient quantities to deliver, and does hereby agree to deliver at the Wyoming-Nebraska State line for the use of said District an amount of water which will, with all the water the lands of the District may be entitled to by reason of any appropriations and all water not otherwise appropriated, including drainage and seepage waters developed by the United States, aggregate a flow of water as follows: [Here follows the delivery schedule]; the total amount to be so delivered being approximately 35,500 acre feet."

There are other exceptions of a minor character to this part of the decree. We have considered them and conclude that they do not have merit.

Pathfinder, Guernsey, Seminoe and Alcova Reservoirs. The Special Master recommends that Wyoming be enjoined to respect the rule of priority of these reservoirs in respect to each other and that the order of seniority as between them be defined as follows: (1) Pathfinder, (2) Guernsey, (3) Seminoe, and (4) Alcova. He recommends, however, that water be allowed to be impounded in Seminoe "out of priority" in relation to Pathfinder and Guernsey for such use only in the generation of power by the Seminoe hydroelectric power plant as will not materially interfere with the administration of the water for irrigation purposes according to the priority as decreed for the French Canal and the State Line Canals.

The United States contends that the decree should permit joint operation of the federal reservoirs without reference to priorities among themselves or among the lands which they serve, in the event of an appropriate adjustment of storage contracts. Concededly the various storage water contracts, including Warren Act contracts, preclude joint operation of Seminoe and Pathfinder. The Special Master also concluded that joint operation would raise questions concerning rights under Wyoming natural flow appropriations senior to Seminoe but junior to Pathfinder. It may be that the latter problem would not be difficult. For as the United States suggests, under joint operation the reservoirs could operate on the Pathfinder priority until they had the combined storage equivalent to Pathfinder. Thereafter they would store no water except such as is needed for appropriations having priorities senior to Seminoe. Since joint operation, however, could not be presently instituted but would have to await modifications of outstanding contracts, we think it best to defer consideration of the proposal until joint operation in fact and in law is permissible. The decree will be without prejudice to the parties to make application for joint operation whenever changed conditions make it possible.

The Interstate, Ft. Laramie, and Northport canals are, as we have noted, part of the North Platte Project. The Kendrick

Project is subordinate to the North Platte Project. The Special Master concluded that proper regulation for Kendrick would be one requiring the observance of priorities, Alcova to Tri-State Dam, both in the storage of water in Seminoe and Alcova and in the diversion of natural flow by the Casper Canal. The record supports that conclusion. Nebraska accordingly urges that the Interstate, Ft. Laramie, and Northport canals receive the same protection from Kendrick as the French Canal and the State Line Canals. If there were doubt that Interstate, Ft. Laramie, and Northport would receive priority in treatment, the decree could be fashioned so as to provide for it. But the matter is covered by contract between the United States and the Casper-Alcova Irrigation District. That contract, which the United States fully recognizes, precludes operation of the Kendrick Project except in recognition of prior rights in the North Platte Project.[18] We therefore do not think it is necessary to include in the decree the additional provision which Nebraska suggests.

Return Flow of Kendrick Project. The Special Master recommends that Wyoming be enjoined (1) from the recapture of return flow water of the Kendrick Project after it shall have reached the North Platte River and become commingled with the general flow of the river, and (2) from diverting water from the river at or above Alcova Reservoir as in lieu of Kendrick return flow water reaching the river below Alcova.

The United States points out that the first part of this restriction may be construed to forbid Wyoming diverters from making the same use of Kendrick return flow water as is permitted Nebraska diverters. Natural flow in this case is used throughout as including return flow. Return flows once returned to the river and abandoned are part of the natural flow available for use by all natural flow diverters within the limitations of the apportionment. To avoid any possible misunderstanding, there should be substituted for the first clause of this proposed provision

[18] The contract provides:

"It is expressly agreed that the development of the Casper-Alcova Project and the irrigation of lands under it is in no way to impair the water rights for the Federal North Platte Reclamation Project in Wyoming and Nebraska, and the said North Platte Project, and Warren Act contractors under it are to receive a water supply of the same quantity as would have been received if the Casper-Alcova Project had not been constructed and operated."

a clause which makes clear that return flows of the Kendrick Project are, for purposes of the decree, deemed to be natural flows when they have reached the North Platte River.

The question whether the United States may divert water from the river at or above Alcova Reservoir as in lieu of Kendrick return flow water reaching the river below Alcova presents complexities. Both the United States and Wyoming contend that that privilege should be granted. The return flow is estimated at 96,000 acre feet a year, 46,000 acre feet being the estimated return during the irrigation season. Some of that return flow will be natural drainage, some will be from sump areas, already noted, from which the United States will construct drainage ditches and thus return to the river water which would otherwise be lost. How much will be returned by natural drainage and how much from the sump areas is not presently known, since the Kendrick Project is not completed.

We will consider first the return flow from natural drainage. *Ide* v. *United States*, 263 U. S. 497, held that the United States might recapture water which resulted from seepage from irrigated lands under a reclamation project and which was not susceptible of private appropriation under Wyoming law. The same conclusion was reached in *United States* v. *Tilley*, 124 F. 2d 850, where the United States was held to be entitled to use and apply the seepage from one division of the North Platte Project to supply lands of another division as against the claim of Nebraska of a right to intercept the seepage and apply it to appropriators senior to the project. And see *Ramshorn Ditch Co.* v. *United States*, 269 F. 80. Cf. *United States* v. *Warmsprings Irrigation Dist.*, 38 F. Supp. 239. In the *Ide* case this Court said:

> "The seepage producing the artificial flow is part of the water which the plaintiff, in virtue of its appropriation, takes from the Shoshone River and conducts to the project lands in the vicinity of the ravine for use in their irrigation. The defendants insist that when water is once used under the appropriation it cannot be used again,—that the right to use it is exhausted. But we perceive no ground for thinking the appropriation is thus restricted. According to the record it is intended to cover, and does cover, the reclamation and cultivation of all the lands within the project. A second use in accomplishing that object is as much within the scope of the

appropriation as a first use is. The state law and the National Reclamation Act both contemplate that the water shall be so conserved that it may be subjected to the largest practicable use. A further contention is that the plaintiff sells the water before it is used, and therefore has no right in the seepage. But the water is not sold. In disposing of the lands in small parcels, the plaintiff invests each purchaser with a right to have enough water supplied from the project canals to irrigate his land, but it does not give up all control over the water or to do more than pass to the purchaser a right to use the water so far as may be necessary in properly cultivating his land. Beyond this all rights incident to the appropriation are retained by the plaintiff. Its right in the seepage is well illustrated by the following excerpt from the opinion of District Judge Dietrick in *United States* v. *Haga*, 276 Fed. 41, 43:

"'One who by the expenditure of money and labor diverts appropriable water from a stream, and thus makes it available for fruitful purposes, is entitled to its exclusive control so long as he is able and willing to apply it to beneficial uses, and such right extends to what is commonly known as wastage from surface run-off and deep percolation, necessarily incident to practical irrigation. Considerations of both public policy and natural justice strongly support such a rule. Nor is it essential to his control that the appropriator maintain continuous actual possession of such water. So long as he does not abandon it or forfeit it by failure to use, he may assert his rights. It is not necessary that he confine it upon his own land or convey it in an artificial conduit. It is requisite, of course, that he be able to identify it; but, subject to that limitation, he may conduct it through natural channels and may even commingle it or suffer it to commingle with other waters. In short, the rights of an appropriator in these respects are not affected by the fact that the water has once been used.'" 263 U. S. pp. 505-506.

If that principle were literally applied, the United States could reclaim the return flows 200 miles downstream from Kendrick at Whalen where they could be diverted to the Interstate or Ft. Laramie Canal. Or if not reclaimed there, the return flows could be applied below the Nebraska line to Warren Act contract requirements. The Special Master thought any such program would be so disruptive of orderly administration as to be intolerable. That, of course, is not the proposal. The proposal is to divert water at or above Alcova in lieu of the return flows from Kendrick below

Alcova. But we think the proposal is basically not in accord with the principle underlying the *Ide* case. That principle is that although the water rights belong to the landowners, the owner of the irrigation project has an interest in the appropriative rights to the extent of obtaining the fullest use of the water for the project. It may, therefore, retain control over the water until abandonment. We think it goes too far to say that when the return flows are abandoned, they may nevertheless be exchanged for upstream diversions by the same amount. When the return flows are abandoned, they become subject to appropriation down stream. See 2 Kinney, Irrigation and Water Rights (2d ed. 1912) § 1114. They no longer remain subject to control for further use in the project. Any claim to them or their equivalent under the form of an "in lieu of" diversion is lost.

When it comes, however, to return flows resulting from drainage facilities installed by the United States, different considerations may be applicable. But for the drainage through artificial channels furnished by the United States, the unused water would never return to the river. The United States could rightfully leave the water in the sumps. In that case, no one would ever have the use of it. It is argued that since by artificial drainage the United States adds to the natural flow below Kendrick, it is only fair to allow Kendrick whatever benefit may result from that contribution. Cf. *Reno* v. *Richards*, 32 Ida. 1. One difficulty is that the drainage system has not been completed, Kendrick has not been put into operation, and we do not know what the contribution by artificial drainage will be. Accordingly, we do not at this time consider the claim on the merits. When Kendrick has been put into operation and there is a full development of return flows, application may be made for revision of the decree to permit "in lieu of" diversions at or above Alcova.

Whalen to Tri-State Dam. As we have said, this is the critical section of the river. The main controversy centers around it and around the Special Master's proposal for dealing with it. He proposes that the natural flow water in this section between May 1 and September 30 each year be apportioned on the basis of 25 per cent to Wyoming and 75 per cent to Nebraska. He recommends that Nebraska be given the right to designate from time to time the portion of its share which shall be delivered to the

Interstate, Ft. Laramie, French and Mitchell Canals for use on Nebraska lands served by them and that Wyoming be enjoined from diversions contrary to this apportionment.[19]

None of the parties agrees to this apportionment.

Wyoming earnestly contends that storage water as well as natural flow should be included in the apportionment which is made for this section of the river. She points out that in *Wyoming* v. *Colorado, supra,* the Court made an apportionment based upon a supply "which is fairly constant and dependable, or is susceptible of being made so by storage and conservation within practicable limits." 259 U. S. p. 480. She argues that the Court has the power to allocate storage water though its disposition is controlled by contracts between the United States and irrigation districts; and that an apportionment which excludes storage water is unfair. The argument is that each State should be restricted to the use of such supplies only as are necessary to provide their respective irrigators, including those receiving water under contracts, with such amounts as are necessary for beneficial use. The large excesses diverted by Nebraska are adverted to as showing the degree to which carry-over storage in the upper reservoirs has been diminished and the supply for Kendrick exhausted.

The Special Master concluded that since the North Platte Project storage water was disposed of under contracts between the United States and landowners under the project and under the Warren Act contracts, the obligations of those contracts and the necessity of performance under them must be recognized by the decree. He concluded, however, that in the allocation of the natural flow the storage water available might bear upon the equities of the States, although it would have no relevancy to the legal rights of individual appropriators *inter se* under the law of either Wyoming or Nebraska. We think the equities of the case support the failure to include storage water in the apportionment. We

[19] He likewise recommends (1) that in the apportionment of water in this section the flow for each day, until ascertainable, shall be assumed to be the same as that of the preceding day as shown by the measurements and computations for that day; and (2) that in the segregation of natural flow and storage water, reservoir evaporation and transportation losses shall be determined in accordance with the formula and data which appear in the record identified as United States Exhibit 204A, unless and until Nebraska, Wyoming, and the United States may agree upon a modification thereof or upon another formula. We discuss the second of these recommendations later in this opinion. We adopt both of them.

do not reach the question whether the presence of the storage water contracts would preclude an apportionment of storage water. The nine Wyoming private canals and the Mitchell and Ramshorn canals have no contract rights to receive storage water from the federal reservoirs. It is difficult for us to see how it would be equitable to make an apportionment on the basis that they do. In certain years in the past there have been excessive diversions by canals in this section, including the nine Wyoming private canals. We cannot assume that an apportionment of storage water is necessary to prevent a recurrence of those practices. Certainly an apportionment of storage water would disrupt the system of water administration which has become established pursuant to mandate of Congress in § 8 of the Reclamation Act that the Secretary of the Interior in the construction of these federal projects should proceed in conformity with state law. In pursuance thereto all of the storage water is disposed of under contracts with project users and Warren Act canals. It appears that under that system of administration of storage water no State and no water users within a State are entitled to the use of storage facilities or storage water unless they contract for the use. See Wyo. Rev. Stats. (1931), §§ 122-1504, 122-1508, 122-1602. If storage water is not segregated, storage water contractors in times of shortage of the total supply will be deprived of the use of a part of the storage supply for which they pay. If storage water is not segregated, those who have not contracted for the storage supply will receive at the expense of those who have contracted for it a substantial increment to the natural flow supply which, as we have seen, has been insufficient to go around. In *Wyoming* v. *Colorado*, *supra*, the Court did not apportion storage water. It apportioned natural flow only. It took into account when it made that apportionment the effects of storage in equalizing natural flow in Wyoming. We think no more should be done here to effect an equitable apportionment.

We have already noted the exceptional features of this section—the great concentration of demand in a short, compact area, the distinctly interstate scope and character of water distribution, with Wyoming appropriations serving Nebraska uses, with the dependence of Nebraska canals on Wyoming diversions, with the joint use of canals to serve both States. There has been no effective interstate administration. The need to treat the section as

an administrative unit without regard to state lines seems apparent. The Special Master concluded that the most feasible method of apportionment would be a distribution of natural flow on a percentage of daily flow basis.

If a division of flow were made according to total acreage, total requirements, or acreage or requirements of senior and junior appropriators, it would be as follows:

	Wyoming	*Nebraska*
Total Acreage	27%	73%
Total Requirement in Acre feet	23%	77%
Total Senior Acreage	24%	76%
Total Junior Acreage	28%	72%
Total Acre feet Requirement, Senior Acreage	22%	78%
Total Acre feet Requirement, Junior Acreage	23%	77%

If the river flow is separated according to priority groups, water values expressed in second feet, and it is assumed that each canal diverts, in order of priority, the maximum limit of one second foot for each 70 acres, the result is as follows:

Flow	*Priority Basis*		*Percentages*		*Acreage Basis* 24%–76%		*Acre Feet Basis* 23%–77%	
	Wyo.	*Neb.*	*Wyo.*	*Neb.*	*Wyo.*	*Neb.*	*Wyo.*	*Neb.*
1. Up to 103 second feet	103	0	100	0	24	79	23	80
2. 103 to 1027 (924)	0	924			222	702	203	721
Cumulative Totals	103	924	10	90	246	781	226	801
3. 1027 to 1121 (94)	94	0			23	71	21	73
Cumulative Totals	197	924	18	82	269	852	247	874
4. 1121 to 1428 (307)	0	307			50	157	46	161
Cumulative Totals	197	1131	15	85	319	1009	293	1035
5. 1328 to 1494 (166)	166	0			40	126	37	129
Cumulative Totals	363	1131	24	76	359	1135	330	1164
6. 1494 to 1513 (19)	0	19			5	14	4	15
Cumulative Totals	363	1150	24	76	364	1149	334	1179
7. 1513 to 1526 (13)	13	0			3	10	3	10
Cumulative Totals	376	1150	25	75	367	1159	337	1189
					28%–72%		23%–77%	
8. 1526 to 4382 (2858)	801	2057	28	72	690	2168	629	2229
Grand Totals	1177	3207	27	73	1057	3327	966	3418
	4384				4384		4384	
					27%–73%		23%–77%	
1 to 8 inclusive	1177	3207	27	73	1184	3200	1008	3376

It is thus apparent that whether a division be proportioned to total acreage or to total diversion requirements or be made on a strict priority basis, there would be no substantial difference except as to the first 1500 second feet. The maximum difference as to other water would be 6%.

Wyoming argues for a mass allocation, e. g. 705,000 acre feet to be allocated to Nebraska for diversion in this section during the irrigation season for Nebraska lands. The Special Master rejected that method. He concluded that it was based on an assumption of dependability of flow which would be bound to result in injustice to one or other of the States; that it apportioned not only natural flow but also storage water, the disposition of which is governed by contracts. We have already considered Wyoming's exception that storage water should have been included in the allocation. We have also considered the other phases of her argument in favor of mass allocation. We repeat that the inadequacy of the supply is too clear to permit adoption of Wyoming's formula.

The United States and Nebraska claim that the adoption of a priority schedule in this section would achieve the most equitable results. On a 25-75 percentage basis, Nebraska would get 75 second feet out of the first 100, to none of which she would be entitled in times of an extreme low flow; Wyoming would get 225 second feet out of the next 900 to none of which she would be entitled on a priority basis. A priority basis would only coincide with the percentage basis when the supply available was 400 second feet or 1500 second feet. If the supply were 800 second feet, a priority basis would give Wyoming 103 second feet and Nebraska the remaining 697 second feet. On the 25-75 percentage basis, Wyoming would receive 200 second feet and Nebraska 600 second feet. It is argued that the unfairness of the proposed apportionment is demonstrated by the record of the low flow of the river in this section during the irrigation season in 1931-1940 period. Thus in 1932 the flow never rose above 1500 second feet after August 10th. In the 1934 season it rose above 1500 second feet only once after June 10th. And in the 1936 season it was not often over 1500 second feet. In 1932, 1934 and 1936 the direct flow frequently fell below 1000 second feet. In 1934 it rose above 800 second feet for only about 33 days during the entire season and was below 400 second feet about 34 days. In 1936 it was below

1000 second feet for over 50 days during the season and below 800 second feet about 28 days. The argument is that fluctuation in the rights to water is inherent in the priority system and that the percentage apportionment of 25-75 is too rigid and does not give sufficient recognition to that fact. The frequency with which the flow has dropped below 1500 second feet during the drought and the inequities which result if a strict priority apportionment is not made at such times are emphasized.

The United States and Nebraska advance as their preferred alternative a strict priority apportion[illegible] in which the rights of each appropriator would be fixed. [illegible]oming says that may not be done since the appropriators are not parties to this proceeding. The Special Master had serious doubts on that score. He also felt that an interstate priority schedule for this section, while not open to all the objections which would be present if it were applied to the whole river, would have other objections. Those were (1) that it would deprive each State of full freedom of intrastate administration of her share of the water and (2) that it would burden the decree with administrative detail beyond what is necessary to an equitable apportionment. Our judgment is that these latter considerations without more are sufficient justification for rejection of the strict priority allocation advanced by the United States and Nebraska. An equitable apportionment may be had without fashioning a decree of that detail. And greater administrative flexibility may be achieved within the respective States by choice of another alternative.

The United States and Nebraska, however, press on us a second alternative in lieu of the 25-75 percentage basis recommended by the Special Master. They suggest that a schedule of varying flows of the stream be adopted. Under that theory there would be an allocation on a priority basis to each of the seven "blocks" of second feet up to and including 1526 second feet. All above 1526 second feet would be apportioned on a percentage basis, *e. g.* 28 per cent to Wyoming and 72 per cent to Nebraska.

That alternative method has much to recommend it because of its rather strict adherence to the principle of priority during the periods of low flow. And it may be that it would involve no greater administrative burden than the flat percentage method. For as Nebraska points out, when the supply is determined it

would seem to be as easy to give Wyoming the first 103 second feet and Nebraska the next 924 second feet as it would be to divide the second feet of flow by percentages. Moreover, the proposed alternative method would preserve, as well as the flat percentage method, the full control of each State over the internal administration of her water supply.

We are not satisfied, however, that the block system of allocation up to and including 1526 second feet is the more equitable under the circumstances of this case. The combined requirement of the Tri-State and Mitchell Canals is 924 second feet. Under the block system of apportionment there would be no water for the Wyoming canals in groups 3, 5, and 7 of the foregoing table except such storage water as would be available to the Lingle and Hill Districts in group 5 under their Warren Act contracts. The Wyoming appropriations in these groups are, to be sure, junior to Tri-State and Mitchell. But as the Special Master points out those Wyoming appropriations, though junior, represent old established uses in existence from 40 to over 50 years. Their water supply was not challenged by Nebraska on behalf of Tri-State and Mitchell until the 1931-1940 drought cycle. For example, 6,282 acres are served by two canals which have exercised their oppropriative rights without interference for over 50 years. Furthermore, the great increase in return flows from the North Platte Project, which we discussed earlier, are relevant here. Those return flows are a "windfall" to irrigators who are so situated on the river as to use them yet who do not have storage rights and who share no part of storage costs. As we have seen, these return flows are substantial and should be taken into account in balancing the equities between Wyoming and Nebraska in this section of the river. Moreover, the storage water rights of the lands included in groups 1, 2, 3 and 4 of the foregoing table bear upon this problem. Eighty-two per cent of that Nebraska acreage has storage water rights under Warren Act contracts; 7 per cent of that Wyoming acreage has storage water rights. When groups 1 to 7 are considered, 82 per cent of the Nebraska acreage and 47 per cent of the Wyoming acreage have storage water rights under Warren Act contracts. The Mitchell and Ramshorn Canals are the only Nebraska canals in the 7 groups which have no storage water rights. As we have said, storage water, though not apportioned, may be taken into account in determining each State's equitable

share of the natural flow. *Wyoming* v. *Colorado, supra.* Our problem is not to determine what allocation would be equitable among the canals in Nebraska or among those in Wyoming. That is a problem of internal administration for each of the States. Our problem involves only an appraisal of the equities between the claimants whom Wyoming represents on the one hand and those represented by Nebraska on the other. We conclude that the early Wyoming uses, the return flows, and the greater storage water rights which Nebraska appropriators have in this section as compared with those of Wyoming appropriators tip the scales in favor of the flat percentage system recommended by the Special Master. It should be noted, moreover, that that method of apportionment, though not strictly adhering to the principle of priority, gives it great weight and does not cause as great a distortion as might appear to be the case. For on the first 412 second feet of flow the advantage would be with Nebraska, since 412 is the point at which 25 per cent of the flow would first equal the 103 second feet which on a priority basis would go to Wyoming. On the next 1,114 second feet the advantage would be with Wyoming, since Wyoming's share on a priority basis would equal 25 per cent of the flow only after the total flow had reached 1,526 second feet.

Accordingly, we conclude that the flat percentage method recommended by the Special Master is the most equitable method of apportionment. We have considered the arguments advanced against the apportionment being made on the basis of 25-75 per cent. But we do not believe the evidence warrants a change in those percentages.

Wyoming urges reductions in the requirements for the Whalen to Tri-State Dam section of the river. As we have seen, the seasonal requirement, as found by the Special Master, is 1,027,000 acre feet. Wyoming thinks this should be reduced 85,000 acre feet by lowering the estimates for the Interstate, Tri-State and Northport Canals and by eliminating the demand of Ramshorn. Wyoming would reduce Interstate by 60,000 acre feet—15,000 on account of alleged excessive acreage, 27,000 on account of possible large winter diversions to Lake Minatare and Lake Alice, 18,000 on account of water which can be pumped from wells. We have examined the evidence on the alleged excessive acreage and the Lake Minatare and Lake Alice diversions and are satisfied that Wyoming has not made a showing sufficient to sustain her exceptions. It would serve no useful purpose to burden this opinion

with the details. As respects the desired reduction because of pumping little need be said. In 1940 Interstate received only 45 per cent of its requirements. Wyoming estimates that the water pumped during that year was the equivalent of 18,000 acre feet at the headgate. It is difficult to see the equity in Wyoming's demand that Interstate's quota from the river be reduced by that amount. These irrigators bore their share of the cost of the operation and maintenance of Pathfinder and Guernsey and also paid the cost of the pumping. It is not just that they forego the benefits of the water for which they are paying, give the benefits to others, and take on the additional expense of pumping.

We have carefully considered Wyoming's claim that excessive estimates have been allowed Tri-State and Northport. As respects Tri-State there is a sharp conflict over the evidence concerning the acreage served. While the acreage of 52,300 acres computed by the Special Master is liberal, it has support in the evidence and Wyoming has not made a sufficient showing which warrants a reduction from that figure. It is true that the Tri-State acreage expanded as the result of Warren Act contracts and that a demand on natural flow to supply that aggregate acreage on its face seems inequitable in relation to canals junior to Tri-State which have no storage rights. But the Special Master found that the supply for the Wyoming private canals in this section had also been enhanced through the operation of Pathfinder and return flows resulting from the use of storage water. We do not believe sufficient disparity has been shown to warrant an adjustment in the decree. The Special Master allowed 30 per cent for loss in the Tri-State Canal. Wyoming claims that should be reduced because water intercepted in the Tri-State Canal for delivery to Northport does not suffer as great a loss since it is not carried as far. But Wyoming's witness reached the same view as the Special Master. And no proof is advanced by Wyoming which undermines that conclusion. Moreover, an examination of the points at which the return flows are intercepted indicates that the room for difference of opinion is not as great as Wyoming suggests.

Wyoming's contention that in determining the requirements of the canals in this section Ramshorn should not have been allotted 3,000 acre feet per annum presents different problems. Ramshorn receives its supply through Tri-State. The Special Master in com-

puting the requirements of Tri-State deducted the return flows below the Tri-State Dam which were intercepted and utilized by the canal.[20] But there apparently was not deducted the accretions from Spring Creek, a tributary which flows into the river below the Wyoming-Nebraska line and above Tri-State Dam.[21] The average run-off of Spring Creek from May to September during the 1932-1940 period appears to have been 2855 acre feet. We agree that this accretion should be taken into account in computing Nebraska's requirement of water from Wyoming.

The Special Master found that the priorities of the canals in this section, the acres served, the requirements in second feet (one second foot for each 70 acres), and the acre feet requirement per season were as follows:

		Canal	Priority	Acres	Second Feet	Acre Feet
		(Grattan	11/1/82	614	9	1,639
		(North Platte	9/22/83	3,153	45	8,418
1.	WYO.	(Rock Ranch	Spring/84	2,250	32	5,908
		(Pratt Ferris	5/22/86	1,200	17	3,204
				7,217	103	19,169
2.	NEB.	(Tri-State	9/16/87	51,000	729	178,500[1]
		(Mitchell	6/20/90	13,633	195	35,000
				64,633	924	213,500
		(Burbank	11/6/91	292	5	833
3.	WYO.	(Torrington	11/28/91	2,061	29	5,503
		(Lucerne	2/21/93	4,221	60	11,270
				6,574	94	17,606
4.	NEB.	(Ramshorn	3/20/93	994	14	3,000
		(Gering	3/15/97	13,500	193	36,000
				14,494	207	39,000
		(Burbank	3/12/98	20	1	53
5.	WYO.	(Narrows	11/13/99	110	2	334
		(Lingle-Hill (via Interstate)	9/6/01	11,500	164	34,299
				11,630	167	34,686
6.	NEB.	(Tri-State	4/14/02	1,300	19	4,550[1]
		(Wright	4/23/02	110	2	303
7.	WYO.	(Grattan	1/27/04	70	1	187
		(Murphy	4/2/04	100	1	275
		(Grattan	12/2/04	639	9	1,706
				919	13	2,471

[20] They are shown on Wyoming's Exhibit No. 149.

[21] They are shown on Wyoming's Exhibit No. 150.

	Canal	Priority	Acres	Second Feet	Acre Feet
	(Lingle-Hill				
	(via Interstate).	12/6/04	2,300	33	11,655
	(Pathfinder Irriga-				
	(tion District (via				
8. WYO.	(Interstate) Wyo-				
	(ming lands ..	12/6/04	2,300	33	9,844
	(Goshen Irrigation				
	(District (via Ft.				
	(Laramie) ...	12/6/04	50,000	714	137,500
			54,600	780	158,999
	(Pathfinder Irriga-				
	(tion District (via				
	(Interstate) Nebraska				
	(Lands ...	12/6/04	84,950[2]	1,213	363,586
	(Gering-Ft. Laramie				
9. NEB.	(Irrigation District (via				
	(Ft. Laramie)	12/6/04	53,500	764	147,100
	(Northport	12/6/04	4,548[3]	65	19,100
			142,998	2,042	529,786
	(Rock Ranch....	1/3/10	822	12	2,195
10. WYO.	(French 2/20/11		504	7	1,346
			1,326	19	3,541
11. NEB.	(French 12/21/11		770	11	2,056
12. WYO.	(French 7/14/15		147	2	392
13. NEB.	(French 9/11/15		213	3	569
	(French 3/20/20		42	1	102
			255	4	671

[1] The value for Tri-State assumes that the historical interceptions (35,500 acre feet annually) by this canal below the state line will in the future be delivered to the Northport District, in compliance with the decree in U. S. v. Tilley, 124 F. (2d) 850.

[2] 98,000 acres minus 10,748 acres supplied by winter diversions to inland reservoirs and minus 2,300 acres of Wyoming lands included in Pathfinder District. Second feet and acre feet requirements are adjusted correspondingly.

[3] This canal supplies a total of 13,000 acres, but 8,452 acres will be supplied in the future by intereception below state line. See Note 1.

Nebraska contends that the requirements of Tri-State should be 196,000 acre feet and that the allotment to the Gering-Ft. Laramie Irrigation District should be 169,165 acre feet. The argument for the increase for Tri-State is based on the theory that Nebraska has not been given in this section the same margin of safety which was allowed Wyoming in the Pathfinder-Whalen section of the river. But Nebraska has not shown that this allowance was less accurate than the ones made to Wyoming in the other section of the river. And our reading of the record convinces us that the

allowances to Nebraska are as liberal as those to Wyoming and that an increase to either would not be justified in view of the overappropriation of the natural flow. The argument of an increase in the allotment to the Gering-Ft. Laramie Irrigation District points out that it receives the same headgate allotment as the Goshen Irrigation District in Wyoming which supplies the Wyoming land under this canal and that the lower area should be given a substantially larger headgate allotment to compensate for canal losses in the upper section of the canal. This argument, however, is not supported by evidence. The same allowance for the lands in each State is supported by the record. For there is evidence that the delivery to the lands in each State in relation to headgate diversions is substantially the same.

The United States contends that the allowance of 65 second feet for the Northport Canal is error. As the Special Master indicated, the 65 second feet allowance is the amount necessary to serve the acreage under that canal which will not be served by return flow intercepted and transported for Northport by the Tri-State canal. But as the United States points out return flow is not steady during the irrigation season. It presented a study showing that in the seven best years from 1930 to 1940 the average return flow intercepted by Tri-State on May 1 was only 23 second feet, averaged only 43.9 second feet for the month of May, averaged 135 second feet for the month of July and did not reach its peak of 200 second feet until September 30, the end of the irrigation season. On that basis Northport could irrigate very little of its acreage from return flow in the first part of the irrigation season, though at the end of the season it could irrigate all. The second feet requirement of Northport is 186. We conclude that Northport should be entitled to use that amount of flow during the season to meet its requirement of 19,100 acre feet. The 186 second feet will, however, be subject to reduction by the amount of return flow intercepted by the Tri-State Canal for delivery to Northport at any given point of time.

As we have noted,[22] the Special Master recommends that for this part of the decree segregation of natural flow and storage water be determined in accordance with the formula and data appearing in U. S. Exhibit 204A, unless and until Nebraska, Wyo-

[22] Note 19, *supra.*

ming and the United States agree upon a modification or upon another formula. Wyoming contends that it is impossible to determine what is natural flow and what is storage water in the Whalen-Tri-State Dam section of the river from day to day. The problem is a perplexing one. Physical segregation is, of course, impossible. But on the basis of the record we think that it is feasible to determine what portion of the flow at a given point is storage water and what portion is natural flow Precision is concededly impossible. But approximations are possible; and they are sufficient for the administration of the river under the decree. It is true, as Wyoming says, that in order to segregate storage water and natural flow, losses by evaporation must be determined and, since those losses vary from section to section, the number of days required for the water to travel from one point to another must be known. The time required for water to travel from Alcova to Nebraska varies under different conditions As an expert of the Bureau of Reclamation testified, since that time interval varies with the amount of water flowing in the river, it is difficult to make a formula which reflects it. Indeed U. S. Exhibit 204A does not include the time lag element and therefore does not supply all the data necessary in the segregation of natural flow and storage water at Whalen. But this expert testified that although it had not been possible to reflect the time interval in a formula, an adjustment for it was made:

> "Q.—In making this time interval correction, you use your best judgment, based upon your experience on the river and your observation of what conditions were in the river, and, using that judgment, you arrive at the figure for this time interval correction, do you not?
>
> "A.—Yes, it is a more or less arbitrary correction . . . ."

But while the adjustment is an arbitrary one, corrections can be made and are made so that over a short period of days the segregation is balanced.[22] And the evidence is that though this ad-

[22] This expert for the Bureau of Reclamation, C. F. Gleason, testified:

"Q.—If there is an error in a series of four or five days as to the amount of natural flow in relation to the storage, that might mean that a natural flow canal might get more or might get less than its due allotment of water, isn't that right?

"A.—That might be true over a very short period. However, the corrections made which are shown in the work sheets as plus or minus storage in that section of the river are made to balance out in such a way that over the

justment is only approximate and lacks percision, it is sufficiently accurate for administrative purposes. For this expert of the Bureau of Reclamation testified:

"Q.—But, giving consideration to all of these factors, there isn't any way of making any accurate determination, day to day, of the actual balance of natural flow and storage at either Guernsey or the Nebraska-Wyoming line, is there?

"A.—That term 'accurate' depends upon what is accurate.

"Q.—I mean this, Mr. Gleason—if there is 5,000 second feet of water arriving at Guernsey, is there any way that you can correctly and accurately determine that 2,500 for instance, is storage and that 2,500 is natural flow?

"A.—Oh, I believe that we arrive at a figure that is correct enough for administrative purposes. It must be realized that an error of ten second feet in five hundred is inevitable. All hydro-graphic records are inaccurate to a varying extent, and the computations based upon them, and based upon assumptions as to evaporation in preparing formulae, so the judgment of the men doing it enters into the final figure, and the most we can hope to do is to arrive at daily figures which, summed up over a period of time, will more closely approximate the accurate figures than the daily figures taken individually do."

No other expert testimony undermines that conclusion.

We cannot conclude that the segregation of natural flow and storage water lacks feasibility. If a comprehensive formula can be agreed upon, it may later be incorporated in the decree.

Gauging Stations and Measuring Devices. The Special Master recommends that such additional gauging stations and measuring devices at or near the Wyoming-Nebraska state line be installed

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season there is no robbery of natural flow or storage and no particular accrual to it as a result of this method of calculation.

"Q.—That is, an attempt is made to balance out, according to your judgment of what ought to be the amount of natural flow and storage at the State line, is that right?

"A.—It is not balanced out according to judgment. It is balanced out mathematically.

"Q.—But it is balanced out mathematically upon what factors?

"A.—Upon the factors of plus and minus channel storage, if you want to use that term. If we plus storage into the channel some days, we minus the total of the same amount later on to make it balance out.

"Q.—That is to say, and you just testified in that way, that your balancing out of these plus and minus quantities that you put in is based upon your judgment of how much natural flow and storage water is at the State line, in view of the conditions and the quantities of natural flow and storage at Alcova?

"A.—Yes, that is correct.

"Q.—Accordingly, the plus or minus corrections are based upon this matter of judgment.

"A.—Yes."

as are necessary for effecting the apportionment in the Whalen-Tri-State Dam section of the river and that they be constructed and maintained at the joint and equal expense of Nebraska and Wyoming. The parties take no exception to this recommendation and it will be adopted.

Tri-State Dam to Bridgeport, Neb. The Special Master excluded this section of the river from the apportionment on the grounds that its canals are adequately supplied from return flows and other local sources. Nebraska takes exception to that exclusion. She points out that of the 12 canals in this section which bear on our problem, two have Warren Act contracts. Nine are senior to all Wyoming appropriations except the first 103 second feet for the oldest appropriators; only about 200 second feet of Wyoming appropriations are senior to these Nebraska appropriations. Nebraska says that four of these canals had insufficient supplies during the three dry years of 1934, 1936 and 1940. And she points out that during the same periods the nine Wyoming canals, serving substantially the same kinds of areas, had excessive diversions. But it appears that other Nebraska canals in the section had excessive diversions during the same years. And the record supports the conclusion of the Special Master that seasonal supplies are adequate. He explained the shortages as due (1) to lack of coincidence between the time and quantity of supplies and the time and extent of needs; (2) the excessive diversions by some canals at the expense of others; (3) the withdrawal of water as a matter of priority to supply senior canals in the lower section. The latter he thought would be largely eliminated due to the construction of the Kingsley and Sutherland Reservoirs.

Nebraska has not convinced us that there is error in this conclusion. Two of the canals have Warren Act contracts. In the 1931-1940 period while there was no limitation on Wyoming uses for Nebraska's benefit, the mean divertible flow passing Tri-State Dam for the May-September period was 81,700 acre feet. This is in addition to the local supplies which even during the drought period were adequate to meet the needs of the canals without calling upon up-river water.

This section will accordingly not be included in the apportionment.

Modification of the Decree. The Special Master recommends that the decree permit any of the parties to apply at the foot of

the decree for its amendment or for further relief, and that the Court retain jurisdiction of the suit for the purpose of any order, direction, or modification of the decree or any supplementary decree that may at any time be deemed proper in relation to the subject matter in controversy. Colorado and Wyoming object to this provision. Colorado's objection that this provision places administrative burdens on the Court which we should not assume has been sufficiently answered. Wyoming's objection is in the main that a complete equitable apportionment should be made, leaving open for future consideration only the question of additional development above Whalen in Wyoming and Colorado. But our rejection of the proposal for a mass allocation disposes of this objection. And we do not think it appropriate to bar, as Wyoming suggests, applications for modifications within a period of ten years, or alternately five years, from entry of the decree.

Ordinary and Usual Domestic and Municipal Purposes. The Special Master reports that the parties are agreed that there should be no restriction upon the diversion from the North Platte River in Colorado or Wyoming of water for ordinary and usual domestic and municipal purposes and consumption and that nothing in the recommended decree is intended to or will interfere with such diversions and uses. Wyoming suggests that that provision cover not only diversions from the North Platte River in Colorado and Wyoming but also diversion from its tributaries in those States and that stock-watering purposes be excepted as well as ordinary and usual domestic and municipal purposes. We think those suggestions are appropriate ones. They will be adopted.

Records of Irrigation and Storage. The decree, as has been seen, will limit Wyoming and Colorado to the irrigation of stated acreages above Pathfinder and to storage of more than stated amounts of water in that region. The United States insists that the decree should also require Wyoming and Colorado to maintain complete and accurate records of irrigation and storage of water in those areas and to keep them available. Wyoming says that is an unnecessary provision. Colorado says that its officials already have such duties. But the record in this case reflects the need for complete and accurate records. And it seems to us desirable that such records be kept. Otherwise, neither the States nor the other interested parties can know if the acreage and storage limitations

are being met. Continuous records will simplify the program of administration. The proposal is adopted.

Importation of Water. The decree which we enter apportions only the natural flow of the North Platte River. The United States suggests that the decree explicitly state that it does not cover any additional supply of water which may be imported into this basin from the watershed of an entirely separate stream and which presently does not flow into the basin. To remove any possible doubt on that score the decree will contain a provision that it does not and will not affect the use of such additional supplies of water or the return flow from it. All questions concerning the apportionment of such water will await the event.

The parties may within ninety days submit the form of decree to carry this opinion into effect. Costs will be apportioned and paid as follows: The State of Colorado, one-fifth; the State of Wyoming, two-fifths; and the State of Nebraska, two-fifths.

It is so ordered.

Mr. Justice JACKSON took no part in the consideration or decision of this case.

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SUPREME COURT OF THE UNITED STATES.

No. 6, Original.—October Term, 1944.

The State of Nebraska,
vs.
The State of Wyoming and the State of Colorado.

[June 11, 1945.]

Mr. Justice Roberts.

I am unable to agree with the court's disposition of this case. I think the decision constitutes a departure from principles long established and observed by the court in litigations between the states of the Union, and adopts a course diametrically opposed to our most recent adjudication in the field of interstate waters.[1] Without proof of actual damage in the past, or of any threat of substantial damage in the near future, the court now undertakes to assume jurisdiction over three quasi-sovereign states and to supervise, for all time, their respective uses of an interstate stream on the basis of past use, including, over a ten year term, the greatest drought in the history of the region, admitting, in effect, that its allocation of privileges to the respective states will have to be revised and modified when that drought ceases and more water becomes available for beneficial use. I doubt if, in such interstate controversies, any state is ever entitled to a declaratory judgment from this court. I am sure that, on the showing in the present record, none of the states is entitled to a declaration of rights. The precedent now made will arise to plague this court not only in the present suit but in others. The future will demonstrate, in my judgment, how wrong it is for this court to attempt to become a continuing umpire or a standing Master to whom the parties must go at intervals for leave to do what, in their sovereign right, they should be able to do without let or hindrance, provided only that they work no substantial damage to their neighbors. In such controversies the judicial power should be firmly exercised upon proper occasion, but as firmly withheld unless the circumstances plainly demand the intervention of the

1 Colorado v. Kansas, 320 U. S. 383.

court. Such mutual accommodations for the future as Nebraska and Wyoming desire should be arranged by interstate compact, not by litigation.

Nebraska initiated this suit on the theory that Wyoming was diverting water under Wyoming appropriations junior to Nebraska appropriations, which, at the time, were either receiving no water or an insufficient supply. Nebraska, in support of its position, attempted to prove the worth of an acre-foot of water for irrigation. But, of course, this is not the way to prove damage in such a controversy; water for beneficial use is what counts. No injury results from the deprivation of water unless a need is shown for that water for beneficial consumptive use at the time by the State claiming to have been wrongfully deprived of it. If water is not needed by downstream senior rights, the denial of water to upstream junior rights can result only in waste. No state may play dog in the manger, and build up reserves for future use in the absence of present need and present damage.

Even on Nebraska's theory, she did not see fit to implead Colorado, obviously because she despaired of showing that anything Colorado was doing, or threatening presently to do, deprived her of any right. Wyoming impleaded Colorado not on the theory that Colorado was injuring Wyoming, or threatening so to do, but on the theory that there ought to be an apportionment of "rights" in the waters of the stream as between the three states,—an advisory judgment on the subject.

I shall first discuss the contemplated decree as it affects Colorado. The Master finds:

"Equity does not require any restriction upon or interference with present uses of water by Colorado within the North Platte Basin in North Park or any reduction in the present rate of transbasin exportation from North Park.

. . . . . .

"Furthermore, reduction in Colorado use would not correspondingly enhance the supply of the other States. In fact there is no clear showing as to the *extent* of benefit to the North Platte Project or other Wyoming or Nebraska users of any limitation upon present uses in North Park."

The Master concludes:

"From a consideration of all of the factors bearing on those equities, my judgment is that equitable apportionment does not require any interference with present uses in North Park."

After referring to possible schemes for further use of water in Colorado as constituting a threat of further depletion, he says of the threat: "It can hardly be said to be immediate." He sums up his conclusions as to Colorado as follows:

"A prohibition against further expansion of irrigation in North Park seems to me recommended by consideration of (a) the insufficiency of the present supply at best to more than satisfy the requirements of presently established uses, (b) the principle laid down in *Colorado* v. *Wyoming*, (c) the consonance of such limitation with the general plan of apportionment being recommended herein. At the same time to impose a permanently fixed restriction against further irrigation development in North Park would not appear justified in view of the possibility of such future increase in supply as to render it unnecessary. The three alternatives are (1) an outright dismissal as to Colorado, (2) denial of any present relief against that state with retention of jurisdiction to grant such relief on a later showing of such continuation of present conditions of supply as to require the conclusion that they must be accepted as the measure of dependability, (3) imposition of a limitation to present uses of water with retention of jurisdiction to release the restriction if and when the 'dry cycle' shall run its course and it appears that the water supply has become such as to justify further expansion of irrigation in North Park. A reasonable argument can be made for any of these three alternatives. My recommendation in line with the third alternative is that Colorado be limited to the irrigation of 135,000 acres, to the accumulation annually of 17,000 acre feet of storage water, and the exportation of 6,000 acre feet per annum to the South Platte basin."

In the proposed decree, he would enjoin Colorado in accordance with this recommendation although, confessedly, Colorado is not diverting, or contemplating diversion of, the waters in question. A more gratuitous interference with a quasi-sovereign State I cannot imagine. It would disregard all that we have repeatedly said to the effect that a state should not be enjoined by this Court at the suit of a sister state unless she is inflicting, or threatening immediately to inflict, grave and substantial damage upon the complainant. I cannot imagine that, as between private parties, an injunction would go against one who is not doing, or immediately threatening to do, harm to the complainant. The court is simply taking Colorado under its wing and proposes to act as guardian of the State in respect to the waters of the North Platte within her borders.

One need only examine the Master's report to determine that Nebraska's case against Wyoming stands no better than that against Colorado.

This court stated, in *Colorado* v. *Kansas*, 320 U. S. 383, 393: "Such a controversy as is here presented is not to be determined as if it were one between two private riparian proprietors or appropriators." Nor is it to be determined by the relative priorities of the users in the upper and the lower states. Yet that is what in effect Nebraska sought by her complaint. She is not awarded the relief she asked but instead the so-called "natural flow" water is apportioned in percentages between Wyoming and Nebraska. This is done in spite of the fact that the Master finds that Nebraska needs none of the natural flow which passes the Tri-State Dam for lands lying below that point but has ample water for those lands, regardless of any such flow. Without a showing of need for water for beneficial use and, in spite of the fact that some of the water flowing past the Tri-State Dam is found now to go to waste, an apportionment is made between Wyoming and Nebraska. The Master's findings show that, under the heretofore uniform test, Nebraska has not proved such damage as would entitle her now to relief. The table quoted in footnote 4 of the court's opinion demonstrates that during a thirty year period, while irrigation did not increase materially in Colorado and increased about one-third in Wyoming, Nebraska more than doubled her acreages under irrigation. Speaking of Nebraska agriculture's dependence on irrigation, the Master says:

"On the other hand, when scanned for evidence of serious drouth damage since 1931, the statistics are equivocal. It appears that there was a rather sharp reduction in the production of alfalfa and sugar beets, but the indication is that this was due to a reduction of acreage rather than of rate of yield. While there was some decline in the production rate of alfalfa, there was a rise in the rate for sugar beets. The acreages devoted to beans and potatoes increased to very closely offset the reduction in beets and alfalfa, the total acreages devoted to the four crops for the three five-year periods, being 124,281, 122,332, and 122,130 respectively. The large increase in total production of beans and potatoes should also be noted. The statistics, taken all in all, are, to say the least, inconclusive as to the existence or extent of damage to Nebraska by reason of the drouth or by reason of any deprivation of water by wrongful uses in Wyoming or Colorado.

"Nebraska makes no strong claim for its showing in this regard. Her brief says:

'. . . the factors involved in the crop statistics which cannot be eliminated largely distort the picture and make it difficult to show one way or the other the effect and results of the shortage of irrigation water upon crop production. However, we believe that when the statistics are properly considered in the light of other factors, they indicate that crop production is seriously damaged when the water supply is low.'

"Another apparent demonstration of the importance of the part played by irrigation in the economic development of western Nebraska may be seen in its Exhibits 433 and 434, in which the growth of population in eight counties in which irrigation has been practiced is compared with that of six counties without irrigation, the latter lying immediately east and south of the irrigated group. The first or irrigated group of counties shows an increase in population in the 40-year period between 1890 and 1930 of 131 per cent. The second, the nonirrigated group, for the same period shows a population loss of three per cent. No attempt, however, is made to attribute this lack of growth in the second group to anything done in Wyoming or Colorado."

Again the Master says:

"It is of course obvious in general and without any detailed proof that in an arid or semi-arid country deprivation of water for irrigation in time of need cannot be otherwise than injurious to the area deprived. The weakness, if such there be, in Nebraska's proof is uncertainty as to the *extent* of any invasion of her equitable share except as measured by diversions 'out of priority' and uncertainty as to the *extent* of her injury consequent upon the alleged violation of her equitable rights, except as measured by the dollar value assigned to the water lost to her through such diversions. If to sustain her burden of proof Nebraska must establish not only violations of her priorities or infringement otherwise on her equitable share by the other States, but also that as a result she has suffered injury of great magnitude in the broad sense of serious damage to her agriculture or industries or observable adverse effects upon her general economy, prosperity or population, then her proof has failed, for there is no clear evidence of any of these things." (Italics in Master's report.)

Further the Master finds:

"Another factor favoring Nebraska is that there will commonly be accidental water in substantial quantities passing the state line above that allocated to the State. Even during the dry cycle and with no restriction on Wyoming uses, the usable water passing Tri-State Dam averaged in the May-September period 81,700 acre

feet. More than half of this flow, however, occurred in May and June with comparatively little in August and September. The quantity is perhaps too uncertain to be considered of great importance. It is a minor factor in the balancing of equities between the States."

Thus it is apparent that of the very natural flow of water with which the Master is dealing some of it went to waste in the area he considered critical. In other words, there was more water for Nebraska than she turned to beneficial use even in the drought years.

As respects both defendants the decree makes a provisional adjustment based upon drought conditions, with the understanding that if conditions change, by reason of events not now envisaged, the defendants may again come to this court for another provisional arrangement which shall stand until some party to the decree thinks that a further revision should be made. Thus three states, with respect to their quasi-sovereign rights, will be in tutelage to this court henceforth.

Such controversies between states are not easily put to repose. Even when judicial enforcement of rights is required, the attempt finally to adjudicate them often proves abortive. Our reports afford evidence of this fact. Kansas and Colorado came here twice, at the instance of Kansas, in a dispute over the flow of the Arkansas River.[2] In a case presenting, on the whole, less difficulty than the present one this court entered a decree June 5, 1922,[3] only to find it necessary to revise it on October 9, 1922.[4] But the controversy would not down. The parties came back here on three occasions because of misunderstandings and disagreements with respect to the effect of our decree.[5]

The controversy with respect to the diversion of the waters of Lake Michigan seemed to require a decree conditioned upon, and containing provisions with respect to, future conduct. The difficulty of administering that decree is evidenced by the repeated appearance of the parties in this court.[6]

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[2] Kansas *v.* Colorado, 206 U. S. 46; Colorado *v.* Kansas, 320 U. S. 383.

[3] Wyoming *v.* Colorado, 259 U. S. 496.

[4] *Id.* 260 U. S. 1.

[5] *Id.* 286 U. S. 494; 298 U. S. 573; 309 U. S. 572.

[6] Wisconsin *v.* Illinois, 278 U. S. 367; 281 U. S. 179; 289 U. S. 395; 309 U. S. 569; 311 U. S. 107; 313 U. S. 547.

Experience teaches the wisdom of the rule we have so often announced, that, in such cases, the complaining state must show actual or immediately threatened damage of substantial magnitude to move this court to grant relief; and that, until such showing is made, the court should not interfere. The court, as I think, now departs from this course.

The bill should be dismissed.

Mr. Justice FRANKFURTER and Mr. Justice RUTLEDGE join in this opinion.